CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH- COURT NO. I

CUSTOMS APPEAL NO. 50522 OF 2024

(Arising out of Order-in-Original No. 54/2022-23/Simmi Jain/Principal Commissioner dated 19.01.2023 passed by the Principal Commissioner of Customs, Air Cargo Complex (Imports), New Delhi)

Innovale Investment Pte. Ltd. **.....Appellant**
24, Raffels Place, 16-05/06,
Clifford Center, Singapore-048621

Versus

The Principal Commissioner of Customs, **.....Respondent**
Air Cargo Complex (Import),
Near IGI Airport,
New Delhi-110037

APPEARANCE:

Shri Prakash Shah, Senior Counsel for the Appellant

Shri Gurdeep Singh, Special Counsel and Shri Rakesh Kumar, Authorized Representative of the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING: 20.02.2025
DATE OF DECISION: 21.04.2025

FINAL ORDER NO. 50504/2025

JUSTICE DILIP GUPTA:

Innovale Investment Pte. Ltd[1] is aggrieved by the order dated 19.01.2023 passed by the Principal Commissioner of Customs, Air Cargo Complex (Imports), New Delhi[2] in respect of the import of the Aircraft of Air Cargo Complex, New Delhi. The order, in so far as it concerns the appellant holds:

(i) The Aircraft valued at Rs. 17,92,49,683/- imported under Bill of Entry No. 269117 dated 24.06.2011, stands

---

1. **the appellant**
2. **the Principal Commissioner**

confiscated under section 111(o) of the Customs Act, 1962[3]. The said Aircraft was provisionally released to the appellant on execution of a bond and bank guarantee amounting to Rs. 4.10 crore. The appellant has been directed to pay redemption fine of Rs. 1,00,00,000/- under section 125 of the Customs Act in lieu of confiscation. The redemption of the Aircraft was, however, permitted only upon payment of duty, interest and penalty by the importer and fine by the appellant. For this purpose, the bank guarantee executed at time of provisional release of the aircraft has to be encashed; and

(ii) Penalty of Rs. 25,00,000/- upon the appellant under section 112(a) of Customs Act.

2. The appellant is the owner of an aircraft called Embraer Phenom 100[4]. This Aircraft was leased to Aviators for operating the same in India and an agreement dated 06.05.2011 was executed. Aviators filed a Bill of Entry dated 24.06.2011 for assessment and clearance of the Aircraft for home consumption and claimed benefit of a Notification dated 01.03.2002, as amended by Notification dated 01.03.2011[5]. The Aircraft was assessed to concessional rate of 2.5% duty under the said Notification based on the following documents submitted by Aviators:

(i) No Objection Certificate issued by the Office of the Directorate General of Civil Aviation, Ministry of Civil Aviation for the import of the Aircraft for carrying out Non-Scheduled Air Transport Services.

---

3. the Customs Act
4. the Aircraft
5. the Notification

(ii) An undertaking dated 23.06.2011 in terms of condition No. 104 of the Notification.

3. Aviators applied for and was issued a Non-Scheduled Air Transport Service permit by the Directorate General of Civil Aviation. Aviators claimed that due to lack of trained pilots, the issuance of the said permit was delayed and the imported Aircraft was not operated. It also claimed that due to various technical and maintenance issues, the Aircraft was not put to use during the period from September 2011 to November 2011, except for two hours in September 2011.

4. Since the Aircraft was lying idle for a substantial period of time resulting in non-payment of the agreed lease payments, the appellant, by a notice dated 11.11.2011, invoked the right of termination of the lease agreement and sought to recover the amount due. Aviators, by a letter dated 22.11.2021, accepted the premature termination of the agreement. The appellant, by a letter dated 23.11.2021, also directed Aviators to hand over the Aircraft to Shamanur Sugars Limited[6], to whom the appellant proposed to lease the Aircraft till the final settlement of dues between the appellant and Aviators and termination of the lease agreement.

5. Subsequently, on 12.04.2012, the appellant terminated the Lease Agreement with Aviators and also informed the Directorate General of Civil Aviation regarding the termination of the lease on 12.04.2012.

6. The appellant, thereafter, leased the Aircraft to SSL, which had an existing permit, by a Lease Agreement dated 12.04.2012.

7. According to the appellant, the de-registration of the Aircraft from Aviators and further endorsement of the same to the Permit of SSL was

---

6. SSL

carried out with the permission/ No Objection Certificate of the Directorate General of Civil Aviation.

8. The appellant also claims that after completion of all statutory compliances, the Aircraft was operated by SSL for remuneration from April 2012 onwards for conducting Non-Scheduled Operations for transportation of persons by air. SSL also issued commercial invoices to its clients for using the Aircraft for Non-Scheduled Charter Services.

9. It appears that the Directorate of Revenue Intelligence, New Delhi, commenced investigation against all the importers of aircrafts, including Aviators, who had claimed benefit under the Notification on import of aircrafts.

10. On 14.03.2013, the Aircraft was seized under section 110 of the Customs Act under the purported belief that the Aircraft was liable for confiscation under sections 111(d) and 111(o) of the Customs Act.

11. Subsequently, the seized Aircraft was provisionally released to the appellant by the Commissioner of Customs (Import and General), New Customs House New Delhi, based on a bond and bank guarantee of Rs. 4.10 crores given by the appellant.

12. However, a show cause notice dated 31.07.2013 was issued to Aviators, SSL and the appellant seeking to deny the benefit of the Notification. The show cause notice also proposed to recover differential duty of Rs. 2,76,26,309/- on the imported Aircraft from Aviators; Rs. 27,86,890/- on the imported spare parts from Aviators; and Rs. 27,86,890/- on the imported Aircraft from Aviators and SSL. It was also alleged that the imported Aircraft and the imported spare parts were liable to confiscation under sections 111(o) and 111(d) of the Customs Act. The appellant was also called upon to show cause as to why redemption fine

under section 125 of the Customs Act and penalty under section 112(a) of the Customs Act should not be imposed.

13. The appellant filed a detailed reply to the show cause notice, inter alia, submitting that the show cause notice was without jurisdiction and was liable to be dropped.

14. The Commissioner, by the order dated 19.01.2023, confirmed the entire demand for differential duty with interest and penalties. The Commissioner also held that the imported Aircraft is liable to confiscation under sections 111(d) and 111(o) of the Customs Act and imposed a redemption fine of Rs. 1,00,00,000/- on the appellant under section 125 of the Customs Act. The Commissioner also imposed penalty of Rs. 25,00,000/- on the appellant under section 112(a) of the Customs Act.

15. The main submission advanced by Shri Prakash Shah, learned senior counsel appearing for the appellant is that the impugned order is liable to be set aside for the sole reason that there was an inordinate delay in adjudication of the show cause notice. Learned senior counsel submitted that the show cause notice was issued on 31.07.2013, but it was adjudicated only on 19.01.2023 after a period of about ten years. Learned senior counsel stated that the appellant was in no way responsible for the delay in adjudication and there is nothing on the record to show that it was not possible to adjudicate the show cause notice within a period of one year provided for in section 28(9) of the Customs Act. In this connection, learned senior counsel placed reliance upon the following decisions:

(i) Shri Balaji Enterprises vs. **Additional Director General, New Delhi & Ors**[7];

---

7. W.P.(C) 11207/2023 decided by the Delhi High Court on 19.12.2024

(ii) **M/s. VOS Technologies India Pvt. Ltd & Anr.** vs. **The Principal Additional Director General & Anr.**[8]; and

(iii) **M/s. Kopertek Metals Pvt. Ltd.** vs. **Commissioner of CGST (West) New Delhi**[9].

16. Learned senior counsel for the appellant also made the following submissions:

(i) The appellant did not contravene any of the conditions of the Notification or the undertaking given at the time of import. In fact, the Notification merely requires that the conditions set out by the Directorate General of Civil Aviation in granting approval/no objection certificate must be complied with for the import of the Aircraft;

(ii) In any view of the matter, the Aircraft was not used for any purpose other than for providing Non-Scheduled Operator Passenger Permit service. There is no post import condition in the Notification and, therefore, the Aircraft cannot be held liable to confiscation. In this connection, reliance has been placed on the decision of the Tribunal in **Commissioner of Customs, New Delhi** vs. **Sameer Gehlot**[10], which decision was affirmed by the Supreme Court in **Commissioner of Customs (Preventive), New Delhi** vs. **Airmid Aviation Services (P) Ltd.**[11];

(iii) The appellant cannot be held liable to pay duty, interest, penalty and fine; and

---

8. W.P. (C) 4831/2021 decided by the Delhi High Court on 10.12.2024
9. Excise Appeal No. 52178 of 2022 decided on 25.11.2024 (Tri.-Del.)
10. 2011 (263) E.L.T. 129 (Tri.-Del.)
11. 2022 (381) E.L.T. 5 (S.C)

(iv) The extended period of limitation under section 28(4) of the Customs Act could not have been invoked in the facts and circumstances of the case.

17. Shri Gurdeep Singh, learned special counsel appearing for the department assisted by Shri Rakesh Kumar, learned authorized representative, however, supported the impugned order and submitted that it was not possible to adjudicate the show cause within one year and to substantiate this submission extensively referred to the facts stated in the order dated 19.01.2023 passed by the Commissioner. Learned special counsel also submitted that even on merits the appellant has no case and that the Principal Commissioner committed no illegality in imposing redemption fine and penalty on the appellant.

18. The submissions advanced by the learned senior counsel for the appellant and the learned special counsel appearing for the department have been considered.

19. Section 28 of the Customs Act deals with recovery of duties not levied or not paid or short levied or short paid or erroneously refunded. It provides for, in sub-section (8), issuance of a show cause notice. It stipulates that the proper officer shall, after allowing the concerned person an opportunity of being heard and after considering the representation, if any, made by such person, determine the amount of duty or interest due from such person under sub-section (9) of section 28.

20. Sub-section (9) of section 28 of the Customs Act, as it stood at the relevant time prior to its amendment on 29.03.2018, is reproduced below:

"**28 (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):"

21. Sub-sections (9) and (9A) of section 28 of the Customs Act, after the amendment made on 29.03.2018, read as under:

"**28(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 case 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 do 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.

28(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 sub-section (9) shall apply not from the date of notice, but from the date when such reason ceases to exist"

22. In the present case, the provisions of sub-section (4) of section 28 of the Customs Act had been involved. The show cause notice was, therefore, required to be adjudicated within one year from the date of notice, where it was possible to do so.

23. The impugned order mentions that show cause notice dated 31.07.2013 could not initially be taken up for adjudication since the Delhi High Court in a judgment dated 03.05.2016 rendered in **Mangali Impex Ltd.** vs. **Union of India And Ors**[12], had held that officers of Directorate of Revenue Intelligence do not have the jurisdiction to issue the show cause notice under section 28 of the Customs Act. The order also notes that during the pendency of the appeal filed by the Department before the Supreme Court to assail the said judgment of the Delhi High Court, the case was transferred to the call book. However, in view of the subsequent Instructions dated 03.09.2019 issued by Central Board of Indirect Taxes and Customs[13] clarifying that show cause notice could be adjudicated since the Supreme Court had granted a stay on the judgment of the Delhi High Court in **Mangali Impex**, the show cause notice was taken up for

---

12. 2016 (335) E.L.T. 605 (Del.)
13. CBIC

adjudication, but as the decision of the Tribunal in **Commissioner of Customs (Import), ACC Mumbai** vs. **Airmid Aviation Pvt. Ltd.**[14] that was in favour of the importer was assailed by the department before the Supreme Court, the show cause notice was again transferred to the call book. The order further notices that though the Supreme Court dismissed the said appeal filed by the department on 26.11.2021, but in the meantime the Supreme Court decided **Canon India Private Limited** vs. **Commissioner of Customs**[15] holding that the officers of Directorate of Revenue Intelligence do not have the jurisdiction to issue a notice under section 28 of the Customs Act. The show cause notice was, therefore, kept in abeyance and was taken up for adjudication on 01.04.2022 when amendments were made in the Customs Act by the Finance Act, 2022 and was ultimately adjudicated upon on 19.01.2023.

24. As noticed above, the show cause notice was issued to the appellant on 31.07.2013. It required the appellant to file a reply to the show cause notice within thirty days, failing which it could be decided to ex-parte on the basis of evidence available on record. The relevant portion of the show cause notice is reproduced below:

> "15.3.2 M/s. Aviators India Pvt. Ltd., M/s.Shamanur. Sugars Ltd. and M/s.Innovale Investments Pte. Ltd. **are hereby jointly and severally called upon to show cause to the adjudicating authority**, viz., Deputy Commissioner of Custom, Air Cargo Complex, Near CSI Airport, Mumbai, **within 30 days of the receipt of the notice as to why**:-
>
> (i) the benefit of exemption contained in Notification No.12/2012-Cus dated 17.03.2012 and 12/2012-CE dated 17.03.2012 should not be denied to the

---

14. 2019 (370) E.L.T. 1789 (Tri.-Mumbai)
15. 2021 (376) E.L.T. 3 (SC)

spare parts of the aircraft imported vide various Bills of Entry mentioned in Annexure 'C'.

(ii) the total Customs duty amounting to ₹ 3,76,888/- (Rupees Three Lakhs Seventy Six Thousand Eight Hundred and Eighty Eight only) actually payable but for the aforesaid exemption in respect of the said aircraft (detailed in Annexure 'C'), should not be recovered in terms of respective undertakings given at the time of their importations, read, with Section 142(2) of the Customs Act, 1962. The above duty is also recoverable under Section 28 along with applicable interest as per Section 28AA of the Customs Act, 1962.

(iii) the said spares of the aircraft totally valued at ₹ 21,00,092/- (Rupees Twenty One Lakhs and Ninety Two only) as detailed in Annexure 'C' to this show cause note imported and cleared by fraudulently availing duty exemption under Notification No. 12/2012-Cus and Notification No.12/2012-CE, should not be confiscated under Section 111(o) of the Customs Act, 1962;

(iv) penalty should not be imposed on them, under Section 112 (a) and (b) of the Customs Act, 1962;

(v) penalty should not be imposed on them, under Section 114A of the Customs Act, 1962.

16. The noticees are required to indicate in their written reply to this notice, whether they wish to be heard in person before the case is decided. **In case no reply is received within 30 days of the receipt of this notice or the noticees fail to appear as and when the case is posted for hearing by the adjudicating authority, the matter may be decided ex-parte on the basis of evidence available on record.**"

(emphasis supplied)

25. The impugned order merely mentions that the case could not be taken up for adjudication because the Delhi High Court in a judgment dated 03.05.2016 rendered in **Mangali Impex** had held that the officers

of Directorate of Revenue Intelligence were not the proper officers. The order also mentions that during the pendency of the appeal filed by the department to assail the said order before the Supreme Court, and in view of the Circular dated 03.11.2017 issued by Central Board of Excise and Customs[16], the case was transferred to the call book. The order also states that subsequently, when the Department clarified through Instructions dated 03.09.2019 that the case could be taken up for adjudication since the Supreme Court had stayed the judgment dated 03.05.2016 of the Delhi High Court in **Mangali Impex** still the case was again transferred to the call book because of a decision dated 11.09.2019 of the Tribunal in **Airmid Aviation**, which decision though was in favour of the appellant but had been challenged by the department before the Supreme Court. The order further states that though the appeal filed by the department against the decision of the Tribunal in **Airmid Aviation** was ultimately dismissed by the Supreme Court on 26.11.2021, but in the meantime, the Supreme Court had in **Canon India** held that the officers of Directorate of Revenue Intelligence were not proper officers under section 28 of the Customs Act to issue the show cause notice. The order also mentions that the case was taken up for adjudication only on 01.04.2022 after amendments were made in the Customs Act.

26. The issue, therefore, that requires determination is whether the department can take advantage of expression "where it is possible to do so" for not adjudicating the show cause notice within one year.

27. Learned senior counsel for the appellant submitted that the department has not been able to substantiate that the adjudicating authority was prevented by "such circumstances or insurmountable

---

16. CBEC

exigencies" from concluding the adjudication proceedings within the stipulated period contemplated under sub-section (9) of section 28 of the Customs Act.

28. The show cause notice was required to be adjudicated within one year from the date of notice, as contemplated under sub-section (9) of section 28 of the Customs Act. The records indicate that it was only on 20.12.2013 that a common adjudication authority was appointed to adjudicate the show cause notice. If the appellant failed to file a reply to the show cause notice within thirty days from the date of receipt of show cause notice, nothing prevented the adjudicating authority from adjudicating the show cause notice within the stipulated period of one year on the basis of the evidence available on record. There was no reason for the department to wait endlessly for the appellant to file a reply to the show cause notice, more particularly when the show cause notice itself provided that if a reply was not filed within thirty days from the date of receipt of the show cause notice, the show cause notice would be adjudicated ex-parte on the basis of evidence on record. The adjudicating authority had necessarily to keep in mind section 28(9) of the Customs Act that requires the adjudicating authority to adjudicate the show cause notice within one year.

29. In the present case, the show cause notice is dated 31.07.2013. It was required to be adjudicated by 30.07.2014. The order mentions that the judgment dated 03.05.2016 rendered by the Delhi High Court in **Mangali Impex** resulted in keeping the show cause notice in the call book. Without examining whether the show cause notice should have been kept in the call book, what it is important to note is that there was really no reason for the adjudicating authority to wait for the decision of the

Delhi High Court in **Mangali Impex** rendered on 03.05.2016. The show cause notice could have been adjudicated much prior 03.05.2016 within the period stipulated in section 28(9) of the Customs Act.

30. This apart, once the Supreme Court had stayed the decision of the Delhi High Court in **Mangali Impex**, the adjudicating authority should have re-called the show cause noticed from the call book and should have taken immediate steps to adjudicate it as the time period contemplated under section 28(9) of the Customs Act had already lapsed. The decision of the Tribunal in **Airmid Aviation**, which the adjudicating authority believed to be in favour of the appellant, could also not have been made a ground to again place the show cause notice in the call book since the show cause notice should have been adjudicated upon on the basis of the decision of the Tribunal in **Airmid Aviation**. It appears that the adjudicating authority was oblivious of the time period, and proceeded to again place the matter in the call book because the department had assailed the decision of the Tribunal rendered in **Airmid Aviation**.

31. These factors, under no circumstances, can be considered to be reasonable grounds for not adjudicating the show cause notice within the period stipulated. It clearly transpires that the adjudicating authority, without there being any plausible explanation, failed to adhere to the time limit set out in section 28(9) of the Customs Act for adjudicating the show cause notice. In fact, sincere efforts were not made by the adjudicating authority to adjudicate the show cause notice within the stipulated time.

32. Sub-section (9) of section 28 of the Customs Act provides that the proper officer **shall** determine the amount of duty within one year from the date of notice. Though, a certain degree of flexibility has been granted to the proper officer because of the phrase “where it is possible to do so”,

but this would only be in circumstances where there are insurmountable exigencies that would impede the adjudication of the show cause notice. The purpose for which the legislature limited the time within which the show cause notice has to be adjudicated has to be appreciated and it cannot work to the detriment of the assessee or the interest of a exchequer.

33. Sub-section (9) of section 28 of the Customs Act, as it stood at the relevant time prior to the amendments incorporated on 29.03.2018, came up for interpretation before the Delhi High Court in **Swatch Group India Pvt. Ltd.** vs. **Union of India**[17]. The Delhi High Court observed that the phrase "where it is possible to do so" would only mean that wherever it is not practicably possible to do a certain act, the period can be extended. The same cannot, however, be an endless period without any plausible justification. The observations are as follows:

> "31. **Therefore, the question, which requires consideration now is whether in terms of erstwhile Section 28(9) of the Customs Act, the impugned SCN dated 14-2-2018 has lapsed having not been adjudicated within the period of 12 months. In other words, whether in the facts and circumstances of the present case, it was not possible for the Revenue to adjudicate the impugned SCN within the period of 12 months from the date of issuance.**
>
> 32. The unamended Section 28(9) of the Customs Act, specifically provides that the proper officer 'shall' determine the amount of duty within six months or within one year, as the case may be, from the date of notice. **It only provides certain degree of inbuilt flexibility by incorporating the words 'where it is possible to do so'**.

---

17. 2023 (386) E.L.T. 356 (Del.)

> 33. **The phrases "as far as possible" and "as far as practicable" appear in other statutes as well came up for consideration before the Apex Court in C.N. Paramasivam and Another v. Sunrise Plaza : (2013) 9 SCC 460/[2013] 30 taxmann.com 320 (SC).** It is observed that the words "possible" and "practicable" are more or less interchangeable along with the other words such as feasible, performable etc. **The incorporation of such words gives certain degree of flexibility to the Department such as if some circumstances or insurmountable exigencies arise, which makes the recourse unpracticable or not possible, the authorities can deviate from what was required to be done in terms of the statute.** When the challenge is laid to the act of the authorities deviating from the rule, the onus shifts on the authority to prove that it was not practicable or possible to follow the rule. The same is to be adjudicated on the facts and circumstances of each case.
>
> 34. **The flexibility, at the same time, in our opinion, cannot be equated with the lethargy of the Department or its officers. The Legislature has mandated the show cause notices to be adjudicated within six months or one year as the case may be; it has provided flexibility only to the extent that if the same is not practicable/possible the period can be extended. The phrase 'where it is possible to do so' would only mean that wherever it is not practicable/possible to do certain act, the period can be extended. The same, however, cannot be an endless period without any plausible justification.**"
>
> **(emphasis supplied)**

34. The Delhi High Court then relied upon an earlier decision of the Delhi High Court in **Sundar System Pvt. Ltd.** vs. **Union of India**[18] and

---

18. 2020 (33) G.S.T.L. 621 (Del.)

observed that the legislature in its wisdom has provided a specific period for the authority to discharge its functions and indifference of the concerned officer to complete the adjudication within the time period cannot be condoned to the detriment of the assessee, for such indifference is not only detrimental to the interest of the taxpayer but also to the interest of the exchequer. The relevant observations of the Delhi High Court are as follows:

> "40. **It is apparent from the documents and the timelines reflects by them that no sincere efforts have been made by the Department for adjudicating the impugned SCN.** Despite being aware of the provisions of the Customs Act, admittedly, no steps were taken by the Department from 29-4-2019 that is the date, the Adjudicating Officer sent a letter to DRI seeking certain clarifications of the documents, and 15-10-2020 when they issued another letter granting personal hearing to the petitioners. **It is, thus, admitted that the Department for almost a period of 17 months slept over the matter despite the specific mandate of even the unamended Section 28(9) of the Customs Act that the duty shall be levied within a period of 12 months from the date of issuance of the notice.**
>
> 41. It is also significant to note that the record of personal hearing dated 9-2-2021 specifically notes that the advocate appearing for the noticee had reiterated its written submissions dated February, 2019. The impugned SCN is stated to have been kept in abeyance thereafter pursuant to the circular dated 17-3-2021.
>
> 42. The respondent has merely produced various letters received from the petitioner, DRI, and others, and has contended that some adjournments were asked for by the petitioners. Admittedly, the matter was listed from time to time for a personal hearing. However, no justification has been provided as to why it was not possible for the Department to

> determine the amount of Customs duty within the prescribed period of time.
>
> 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.**
>
> *****
>
> 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.**"
>
> **(emphasis supplied)**

35. It would be seen from the aforesaid judgment of the Delhi High Court in **Swatch Group** that the High Court made it amply clear that the incorporation of words like "where it is possible to do so" merely give a certain degree of flexibility to the department where there are

circumstances or insurmountable exigencies which make it impracticable or not possible for the authorities to adjudicate, and in such cases the authorities can deviate from the time limit provided in the Statute. The High Court further held that when the legislature has specifically provided flexibility only to the extent that it was not practicable/possible to adjudicate within the stipulated time, the period can be extended only on satisfaction of such circumstances. The Delhi High Court specifically observed that the phrase "where it is possible to do so" would only mean wherever it is not practicable or possible to do a certain act, the period can be extended but the same cannot provide endless time limit to the department without any plausible justification. In the present case, none of the aforesaid situations existed for extension of the time limit.

36. In **VOS Technologies**, the Delhi High Court again, in the context of delayed adjudication, observed:

> "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.
>
> 75. More importantly, this Court had in Nanu Ram Goel clearly held that placing matters in abeyance for years together or transferring them to the call book would not be liable to be countenanced as factors relevant or germane to explain an inordinate delay in adjudication. Insofar as the precept of "reasonable period" which would bind the respondents to conclude adjudication or to initiate action notwithstanding a statute not prescribing a period of limitation, *****"
>
> **(emphasis supplied)**

37. In **Balaji Enterprises**, the Delhi High Court after taking into consideration the decisions rendered in **Swatch Group** and **VOS Technologies** also observed:

> "13. **The Court has considered the matter. The issue raised in the petition is no longer res-integra. Section 28(9) of the 1962 Act unamended and amended have been considered in detail by coordinate Benches of this Court in Swatch Group India Pvt. Ltd.(supra) as also M/S Vos Technologies India (supra).** All the issues which have been raised by the Department now stand adjudicated. The relevant observations in the said judgments are set out below: *****"
>
> **(emphasis supplied)**

38. All the aforesaid judgments of the Delhi High Court pertain to the un-amended provisions of section 28(9) of the Customs Act, which provisions are also involved in the present appeal.

39. It would also be useful to refer to decisions that hold that even if a time limit is not prescribed for deciding a matter, it would still have to be decided within a reasonable period of time.

40. In **State of Punjab & Ors.** vs. **Bhatinda District Cooperative Milk Producers Union Ltd.**[19], the Supreme Court reiterated the aforesaid principle in the following words:

> "20. *****
>
> 18. **It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period.** What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors."
>
> 21. **As noted above, Section 73 of the Act, as in force at the material time, did not stipulate any period within which the show cause notice was required to be adjudicated. It merely stipulated the period within which the show cause notice was required to be issued. However, there is no cavil that the authority conferred with the jurisdiction is required to exercise the same within a reasonable period.** *****"
>
> **(emphasis supplied)**

41. In **VOS Technologies**, the Delhi High Court also examined whether the adjudication has to be completed within a reasonable period of time, even if no limitation is prescribed. The relevant observations are:

> "76. **Way back in 1969, the Supreme Court in State of Gujarat vs. Patil Raghav Natha (2022 SCC OnLine SC 1073), had held that while Section 211 of the Land Revenue Code did not prescribe a limitation period for the Commissioner to revise orders, such power must be exercised within a reasonable time, determined by the facts of a case and the nature of the order.** In this case, the Commissioner's action, over a year later, was deemed unreasonably delayed with the Supreme Court observing thus:

---

19. 2007 (217) E.L.T. 325 (S.C.)

> "11. The question arises whether the Commissioner can revise an order made under Section 65 at any time. It is true that there is no period of limitation prescribed under Section 211, but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised. *****"

77. **Similarly, in Govt. of India vs. Citedal Fine Pharmaceuticals [(1989) 3 SCC 483], the Supreme Court held that in the absence of a period of limitation being prescribed or a silence in the statute, authorities would still be obliged to exercise their power within a "reasonable period". In Citedal,** the Supreme Court held:

> "6. Learned counsel appearing for the respondents urged that Rule 12 is unreasonable and violative of Article 14 of the Constitution, as it does not provide for any period of limitation for the recovery of duty. He urged that in the absence of any prescribed period for recovery of the duty as contemplated by Rule 12, the officer may act arbitrarily in recovering the amount after lapse of long period of time. We find no substance in the submission. While it is true that Rule 12 does not prescribe any period within which recovery of any duty as contemplated by the rule is to be made, but that by itself does not render the rule unreasonable or violative of Article 14 of the Constitution. In the absence of any period of limitation it is settled that every authority is to exercise the power within a reasonable period. What would be reasonable period, would depend upon the facts of each case. **Whenever a question regarding the inordinate delay in issuance of notice of demand is raised, it would be open to the assesee to contend that it is bad on the ground of delay and it will be for the relevant officer to consider the question whether in the facts and circumstances of the case notice of demand for recovery was made within reasonable period. No hard and fast rules can be laid down in this regard as the determination of the question will depend upon the facts of each case.**"

> 78. **More recently in SEBI vs. Sunil Krishna Khaitan [(2023) 2 SCC 643], the Supreme Court again reiterated the principle that when no limitation period is prescribed for initiating proceedings under a statute, action must still be taken within a reasonable period and which could vary based on the facts and circumstances of each case.** The key factors to be considered, the Supreme Court explained, would include the nature of the violation, whether it was concealed, potential prejudice caused, and the creation of third-party rights. The Court reaffirmed that authorities must act without undue delay to prevent injustice and abuse of power, while ensuring that the statute's objectives are met. The Court also noted that public interest demands that stale matters are not pursued unnecessarily and objections to delay must be fairly and rationally considered. *****"
>
> **(emphasis supplied)**

42. The Delhi High Court in **Nanu Ram Goyal** vs. **Commissioner of CGST and Central Excise, Delhi**[20] had an occasion to examine the provisions of section 73 of the Finance Act, 1994[21]. At the relevant time, this section did not provide for determination of the amount of service tax by the Central Excise Officer within a certain period, since sub-section (4B) of section 73 was introduced in the Finance Act w.e.f. 06.08.2014. Section 73(4B) of the Finance Act provides that the Central Excise Officer shall determine the amount of service tax within six months from the date of notice where it is possible to do so, in respect of cases falling under sub-section (1) of section 73 and 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) of section 73 of the

---

20. 2023 (74) G.S.T.L. 17 (Del.)
21. the Finance Act

Finance Act. It is in this context that the Delhi High Court, after referring to judgments of the Supreme Court, observed:

> "16. **As noticed at the outset, the principal controversy to be addressed is whether the respondents are precluded from proceeding with the impugned show cause notice on the ground of inordinate delay.**
>
> 17. **Section 73 of the Act, as in force at the material time, did not stipulate any time period.** However, by virtue of the Finance (No. 2) Act, 2014, sub-section (4B) was introduced in Section 73 of the Act which stipulates that where it is possible to pass an order, the Central Excise Officer would determine the amount of service tax within a period of one year in respect of cases falling under the proviso to sub-section (1) or the proviso to sub-section (4A), and within a period of six months from the date of notice in cases falling under Section 73(1) of the Act.
>
> *****
>
> 19. **It is settled law that where there is no period stipulated for exercising jurisdiction, the same must be done within a reasonable period.**"
>
> **(emphasis supplied)**

43. In **UPL Ltd.** vs. **Union of India**[22], the Bombay High Court also examined a case where a show cause notice was issued on 21.10.2010 before insertion of sub-section (4B) to section 73 of the Finance Act but was not adjudicated for a long period of thirteen years and in this context the High Court observed:

> "4. **We were constrained to make the above observations as we take judicial notice of series of petitions reaching this Court on the ground that the concerned jurisdictional officers exercising such enormous powers not**

---

22. 2023 (79) G.S.T.L. 225 (Bom.)

only under the Finance Act, 1994, but also under the other Central Acts, for reasons which are totally ill-conceived and contrary to law, have not adjudicated and/or taken forward the show cause notice for unduly long periods and in some case about 10 years. In our opinion, a serious view in this regard is required to be taken by the Ministry of Finance in regard to the officers who are not diligently discharging such vital duties and who in fact are playing with the public revenue. In such context, in our decision in Coventry Estates Pvt. Ltd. v. Joint Commissioner CGST and Central Excise & Anr. [Writ Petition No. 4082 of 2022, decided on 25 July, 2023] [(2023) 10 Centax 38 (Bom.)] which concerned delayed adjudication of a show cause notice, considering the binding statutory provisions, **we have observed that such lethargic approach of the concerned officer not to adjudicate show cause notice within the time-frame as prescribed by law, would be an action on the part of the concerned officer contrary to law, who cannot be expected to violate the mandate of law. As such issues vitally affect the public revenue, we also observed that such inaction on the part of such officers would adversely affect the interest of the revenue.** We also observed that if prompt adjudication of the show cause notice is not undertaken, such lapse of time and certainly a long lapse of time is likely to cause irreversible changes frustrating the whole adjudication.*****

*****

17. **In our opinion, even in absence of the provisions of sub-section (4)(B) of Section 73, respondent No. 2 could not have acted oblivious to the settled principle of law, that a show cause notice would be required to be adjudicated within a reasonable time depending the facts of each case.** However, as observed by us in our decision in Coventry Estates Pvt. Ltd. v. Joint Commissioner, CGST and Central

> Excise & Anr. (supra), reasonable time would not be an egregious, unjustified and unexplained inordinate delay. Having perused the reply affidavit, we find that no justification whatsoever is given by the Deputy Commissioner in Commissioner not adjudicating the show cause notice. We are thus of the opinion that the present case is clearly covered by our decision in Coventry Estates Pvt. Ltd. v. Joint Commissioner CGST and Central Excise & Anr. (supra) in regard to the legal position we have set out.
>
> 18. **In the light of the above discussion, we are certain that this petition is required to be allowed.** It is accordingly allowed in terms of prayer clauses (a) and (b)."
>
> **(emphasis supplied)**

44. It would also be useful to refer to the earlier judgment of the Bombay High Court in **Coventry Estates Pvt. Ltd.** vs. **The Joint Commissioner, CGST and Central Excise**[23], that was followed by the Bombay High Court in **UPL**. The show cause notice was issued on 16.03.2012, but it was not adjudicated for a long period of more than ten years. The relevant observations of the Bombay High Court are:

> "8. **The primary contention as canvassed by Mr. Raichandani, learned counsel for the petitioner is that there is no warrant for the adjudicating authority to adjudicate the show cause notice, after such long and unreasonable delay of more than 10 years, as the adjudication of the show cause notice after such inordinate delay is severely prejudicial to the rights of the petitioner.** ***** It is hence submitted that by no stretch of imagination, in the absence of any justifiable reason, the show cause notice can be adjudicated after a long delay of 10 years.
>
> *****

23. (2023) 10 Centax 38 (Bom.)

16. **We are thus of the opinion that there has to be a holistic approach and reading of the provisions of Section 73, when it concerns the obligation and repository of the power to be exercised by the concerned officer to recover service tax, in adjudicating any show cause notice, issued against an assessee considering the raison d'etre of the provision. It is hence expected that the approach and expectation from the officer adjudicating the show cause notice would be to strictly adhere to the timelines prescribed by provisions of the Act, as there is a definite purpose and intention of the legislature to prescribe such time limits, either under Section 73(4B) of six months and one year respectively or of five years under Section 73(1).**

17. In our opinion, in the facts of the present case, such requirement and obligation the law would mandate is completely overlooked by the officer responsible for adjudicating the show cause notice. We are not shown any provision, which in any manner would permit any authority to condone such inordinate delay on the part of the adjudicating officer to adjudicate show cause notice. **There can be none, as the legislature has clearly intended to avoid uncertainty, which otherwise can emerge. Thus, what would become applicable are the settled principles of law as laid down in catena of judgments, that the period within which such adjudication should happen is as mandated by law and in any case it needs to be done within a reasonable period from the issuance of the show cause notice. Further, whether such period is a reasonable period would depend upon the facts and circumstances of each case.**

18. An inordinate delay is seriously prejudicial to the assessee and the law itself would manifest to weed out any uncertainty on adjudication of a show cause notice, and that too keeping the same pending for such a long period itself is not what is conducive.

19. **It is well said that time and tide wait for none. It cannot be overlooked that the pendency of show cause notice not only weighs against the legal rights and interest of the assessee, but also, in a given situation, it may adversely affect the interest of the revenue, if prompt adjudication of the show cause notice is not undertaken, the reason being a lapse of time and certainly a long lapse of time is likely to cause irreversible changes frustrating the whole adjudication.**

20. **We are also of the clear opinion that a substantial delay and inaction on the part of the department to adjudicate the show cause notice would seriously nullify the noticee's rights causing irreparable harm and prejudice to the noticee. A protracted administrative delay would not only prejudicially affect but also defeat substantive rights of the noticee.** In certain circumstances, even a short delay can be intolerable not only to the department but also to the noticee. In such cases, the measure and test of delay would be required to be considered in the facts of the case. This would however not mean that an egregions delay can at all be justified. This apart, delay would also have a cascading effect on the effectiveness and/or may cause an abridgement of a right of appeal, which the assessee may have. **Thus, for all these reasons, delay in adjudication of show cause notice would amount to denying fairness, judiciousness, non-arbitrariness and fulfillment of an expectation of meaningfully applying the principles of natural justice. We are also of the clear opinion that arbitrary and capricious administrative behaviour in adjudication of show cause notice would be an antithesis to the norms of a lawful, fair and effective quasi judicial adjudication. In our opinion, these are also the principles which are implicit in the latin maxim "lex dilationes abhorret", i.e., law abhors delay.**"

(emphasis supplied)

45. It transpires from the aforesaid decisions that:

(i) The phrases "as far as possible" and "as far as practicable" are more or less inter-changeable along with the word "feasible";

(ii) Only when circumstances or insurmountable exigencies make it impracticable or not possible for the adjudication to take place within the stipulated period that the authorities may deviate from the time limit prescribed under the Statute;

(iii) The mandate of the legislature that the show cause notice should be adjudicated within six months or one year, as the case may be, only provides flexibility for extension of the period when it is not practicable or possible to adjudicate it within the said time limit. The time limit cannot be extended endlessly without any plausible justification;

(iv) The indifference of the adjudicating authority to complete the adjudicating process within the statutory time limit cannot be condoned to the detriment of the assessee or to the interest of the exchequer;

(v) There is a definite purpose and intention of the legislature to prescribe such time limit. The legislature clearly intended to avoid uncertainly, which otherwise can emerge; and

(vi) Even if no time limit is prescribed for adjudication of a show cause notice, then too the adjudication has to be completed within a reasonable period. However, what would be a reasonable period would depend upon the

nature of the Statute, rights and liabilities thereunder and other relevant factors; and

(vii) It is not permissible for the department to place show cause notices in the call book without any reasonable justification.

46. The factual position, as noticed above, leaves no manner of doubt that the adjudicating authority, despite the specific mandate contained in sub-section (9) of section 28 of the Customs Act to adjudicate the show cause notice within one year, completely failed to discharge the statutory obligation cast upon it. The phrase "where it is possible to do so", does give a certain degree of flexibility to the adjudicating authority when circumstances are such that make it not possible for the adjudicating authority to decide or there are insurmountable exigencies, but such exceptional circumstances or exigencies do not exist in the present case.

47. It will also be useful to examine decisions that deal with placement of show cause notices in the call book by the department.

48. The Delhi High Court in **Balaji Enterprises** observed that it is not permissible to place the show cause notice in a call book and take it up after several years. The observations are:

> "**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 callbook would justify non-adjudication of the notice within a reasonable period. The opinion has been unanimous of the Coordinate Benches of this Court, that placing of the matter on the call book and taking it up after several years would not be permissible.**"
>
> **(emphasis supplied)**

49. The same view was also expressed by the Delhi High Court in **VOS Technologies** and the relevant observations are:

> "80. The disclosures made in this batch, however, establish that the respondents in each case, adopted a repetitive exercise of placing matters in the call book, retrieval therefrom, followed by those matters being transferred back to that book yet again. These actions appear to have been taken mechanically and casually based solely on the directions of the Board and without any application of mind to the facts obtaining in individual cases or the formation of requisite opinion as contemplated under Section 28(9-A)."

50. In the present case, it is seen that there was no justifiable reason for the department to place the show cause notice in the call book and thereby delay the adjudication contrary to the specific mandate of sub-section (9) of section 28 of the Customs Act.

51. In this view of the matter, as the impugned order is being set aside for the reason that it was not passed within the time stipulated in sub-section (9) of section 28 of the Customs Act, it would not be necessary to examine the contentions raised by the learned senior counsel for the appellant on merits.

52. The order dated 19.01.2023 passed by the Principal Commissioner adjudicating the show cause notice dated 31.07.2013 is, accordingly, set aside and the appeal is allowed.

(Order pronounced on **21.04.2025**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Shenaj, Shreya