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

% **Judgment reserved on: 13 August 2024**
Judgment pronounced on: 10 December 2024

\+ W.P.(C) 4831/2021
M/S VOS TECHNOLOGIES INDIA PVT. LTD. .....Petitioner
Through: Mr. Prem Ranjan Kumar, and Ms. Poojan Malhotra, Advocates.

versus

THE PRINCIPAL ADDITIONAL DIRECTOR GENERAL & ANR. .....Respondents
Through: Mr. Harpreet Singh, Sr. St. Counsel with Ms. Suhani and Mr. Jatin Kumar Gaur, Adv.

\+ W.P.(C) 4832/2021
M/S AMYRA TECHNICA PVT.LTD. .....Petitioner
Through: Mr. Prem Ranjan Kumar, and Ms. Poojan Malhotra, Advocates.

versus

THE PRINCIPAL ADDITIONAL DIRECTOR GENERAL & ANR. .... Respondents.
Through: Mr. Harpreet Singh, Sr. St. Counsel with Ms. Suhani and Mr. Jatin Kumar Gaur, Adv.

\+ W.P.(C) 15202/2023 & CM APPL. 60768/2023 (Stay)

M/S R ANIL KUMAR & ANR. .....Petitioner
Through: Mr. Sunil Dalal, Sr. Adv. with Ms. Shikha Sapra, Mr. Piyush Kumar, Ms. Reena Rawat, Mr. Nikhil Beniwal, Mr. Navish Bhati, Mr. Mahabir Singh, Mr. Archit Jindal and Mr. Akash Gupta, Advs.

versus

ADDITIONAL DIRECTOR GENERAL, DIRECTORATE OF REVENUE INTELLIGENCE & ANR. ....Respondents

Through: Mr. Anurag Ojha, Sr. St. Counsel with Mr. Subham Kumar, Mr. Vipul Kumar and Mr. Abhishek, Adv. for R-1.
Mr. Aditya Singla, SSC with Ms. Charu Sharma, Mr. Ritvik Saha and Mr. Raghav Bakshi, Advocates.

\+ W.P.(C) 6193/2021

LAXMI SALES CORPORATION .....Petitioner

Through: Mr. Prem Ranjan Kumar, and Ms. Poojan Malhotra, Advocates.

versus

THE PRINCIPAL ADDITIONAL DIRECTOR GENERAL .....Respondent

Through: Mr. Harpreet Singh, Sr. St. Counsel with Ms. Suhani and Mr. Jatin Kumar Gaur, Adv.

\+ W.P.(C) 3147/2023

M/S MOHIT INTERNATIONAL THROUGH, PROP. HARSH ANIL KUMAR VASA .....Petitioner

Through: Mr. V.V.Gautam, Ms. Nitu Barik, Ms. Priya Bhatia, Advs.

versus

COMMISSIONER OF CUSTOMS AIR CARGO COMPLEX (EXPORTS) & ORS. ....Respondents

Through: Mr. Harpreet Singh, SSC
Mr. Anurag Ojha, Sr. St. Counsel with Mr. Subham Kumar, Mr. Vipul Kumar and Mr. Abhishek,

Adv.

\+ W.P.(C) 10289/2023 & CM APPL. 22837/2024 (Stay)

SHEEL NARAIN GUPTA .....Petitioner

Through: Dr. Prabhat Kumar and Mr. Karan Kanwal, Advs.

versus

COMMISSIONER OF CUSTOMS ADJUDICATION AND ORS ....Respondent

Through: Mr. Anurag Ojha, Sr. St. Counsel with Mr. Subham Kumar, Mr. Vipul Kumar and Mr. Abhishek, Adv. for R-2.

\+ W.P.(C) 12425/2023 & CM APPL. 49000/2023 (Stay)

ASHISH JAIN & ORS. ....Petitioners

Through: Mr. Sunil Dalal, Sr. Adv. with Ms. Shikha Sapra, Mr. Piyush Kumar, Ms. Reena Rawat, Mr. Nikhil Beniwal, Mr. Navish Bhati, Mr. Mahabir Singh, Mr. Archit Jindal and Mr. Akash Gupta, Advs.

versus

ADDITIONAL DIRECTOR GENERAL, DIRECTORATE OF REVENUE INTELLIGENCE & ANR. .....Respondents

Through: Mr. Anurag Ojha, Sr. St. Counsel with Mr. Subham Kumar, Mr. Vipul Kumar and Mr. Abhishek, Adv.

Mr. Aakarsh Srivastava, St. Counsel with Mr. Vaibhav Gupta, Adv. for R-2.

\+ W.P.(C) 13509/2023 & CM APPL. 64301/2023 (Stay)

ACRY MONOMERS INDIA PVT LTD & ORS. .....Petitioners

Through: Mr. Prem Ranjan Kumar, and

Ms. Poojan Malhotra, Advocates.

versus

ADDITIONAL DIRECTOR GENERAL DIRECTORATE OF REVENUE INTELLIGENCE & ANR. .....Respondents

Through: Mr. Anurag Ojha, Sr. St. Counsel with Mr. Subham Kumar, Mr. Vipul Kumar and Mr. Abhishek, Adv.
Mr. Aakarsh Srivastava, St. Counsel with Mr. Vaibhav Gupta, Adv. for R-2.

\+ W.P.(C) 15971/2023 & CM APPL. 64259/2023 (Stay)

NAVSHAKTI INDUSTRIES PVT LTD AND ANR ...Petitioners

Through: Mr. T.P.S.Kang, Md. Zunaid and Mr. Mohek Gupta, Advs.

versus

UNION OF INDIA AND ORS. .....Respondents

Through: Ms. Gigi George and Mr. Dheeraj Singh, Adv. for R-1.
Ms. Bakshi Vinita, SPC.
Mr. Aakarsh Srivastava, St. Counsel with Mr. Vaibhav Gupta, Adv. for R-2.

\+ W.P.(C) 16126/2023 & CM APPL. 64821/2023 (Stay)

M/S SUNNY SALES .....Petitioner

Through: Mr. Sunil Dalal, Sr. Adv. with Ms. Shikha Sapra, Mr. Piyush Kumar, Ms. Reena Rawat, Mr. Nikhil Beniwal, Mr. Navish Bhati, Mr. Mahabir Singh, Mr. Archit Jindal and Mr. Akash Gupta, Advs.

versus

COMMISIONER OF CUSTOMS (ADJUDICATION) DELHI & ANR. .....Respondents

Through: Mr. Aditya Singla, SSC with Ms. Charu Sharma, Mr. Ritvik Saha and Mr. Raghav Bakshi, Advocates

\+ W.P.(C) 16163/2023 & CM APPL. 65012/2023 (Stay)

CITY PAPER .....Petitioner

Through: Mr. T.P.S.Kang, Md. Zunaid and Mr. Mohek Gupta, Advs.

versus

UNION OF INDIA AND ORS .....Respondents

Through: Ms. Gigi George and Mr. Dheeraj Singh, Adv. for R-1
Mr. Gibran Naushad, SSC.
Mr Ranvir Singh, CGSPC with Mr. A.K.Singh, Adv.
Mr. Anurag Ojha, Sr. St. Counsel with Mr. Subham Kumar, Mr. Vipul Kumar and Mr. Abhishek, Adv. for R-4.

\+ W.P.(C) 6146/2024 & CM APPL. 25563/2024 (Stay)

SUPERTECH ENGINEERS .....Petitioner

Through: Dr. Prabhat Kumar and Mr. Karan Kanwal, Advs.

versus

COMMISSIONER OF CENTRAL TAX DELHI WEST AND ANR .....Respondents

Through: Mr. Gibran Naushad, SSC.
Mr. Anurag Ojha, Sr. St. Counsel with Mr. Subham Kumar, Mr. Vipul Kumar and Mr. Abhishek, Adv. for Resp.

\+ W.P.(C) 16193/2023 & CM APPL. 65092/2023 (Stay)
NAVSHAKTI INDUSTRIES PVT LTD
AND ANR .....Petitioners
Through: Mr. T.P.S.Kang, Md. Zunaid and Mr. Mohek Gupta, Advs.

versus

UNION OF INDIA AND ORS .....Respondents
Through: Mr. J.K.Tripathi, SPC for R-1 and Ms. Bakshi Vinita, SPC Mr. Gibran Naushad, SSC.

\+ W.P.(C) 3705/2024
ECHO INTERNATIONAL AND ORS ....Petitioners
Through: Dr. Prabhat Kumar and Mr. Karan Kanwal, Advs.

versus

PRINCIPAL COMMISSIONER OF CUSTOMS IMPORT AND ANR .....Respondents
Through: Ms. Anushree Narain, Standing Counsel with Ms. Nishtha Mittal, Adv. for R-1 Mr. Anurag Ojha, SSC with Mr. Subham Kumar, Mr.Vipul Kumar and Mr. Abhishek, Adv. for R.

\+ W.P.(C) 3737/2024
DOLPHIN PRINTERS AND ANR .....Petitioners
Through: Dr. Prabhat Kumar and Mr. Karan Kanwal, Advs.

versus

PRINCIPAL COMMISSIONER OF CUSTOMS IMPORT AND ANR .....Respondents
Through: Ms. Anushree Narain, Standing Counsel with Ms. Nishtha Mittal, Adv. for R-1

Mr. Anurag Ojha, SSC with Mr. Subham Kumar, Mr. Vipul Kumar and Mr. Abhishek, Adv. for R-2

\+ W.P.(C) 3753/2024

BHAMBRI PRINTING PRESS AND ORS .....Petitioners

Through: Dr. Prabhat Kumar and Mr. Karan Kanwal, Advs.

versus

PRINCIPAL COMMISSIONER OFCUSTOMS IMPORT AND ANR .....Respondents

Through: Ms. Anushree Narain, Standing Counsel with Ms. Nishtha Mittal, Adv. for R-1
Mr. Aakarsh Srivastava, SC with Mr. Vaibhav Gupta, Adv.
Mr. Anurag Ojha, Sr. St. Counsel with Mr. Subham Kumar, Mr. Vipul Kumar and Mr. Abhishek, Adv. for R-2

\+ W.P.(C) 3755/2024

RHEA INTERNATIONAL AND ANR .....Petitioners

Through: Dr. Prabhat Kumar and Mr. Karan Kanwal, Advs.

versus

PRINCIPAL COMMISSIONER OF CUSTOMS IMPORT AND ANR .....Respondents

Through: Mr. Aakarsh Srivastava, SC with Mr. Vaibhav Gupta, Adv. for R-1.
Mr. Anurag Ojha, Sr. St. Counsel with Mr. Subham Kumar, Mr. Vipul Kumar and Mr. Abhishek, Adv. for R-2

\+ W.P.(C) 3865/2024 & CM APPL. 15953/2024 (Stay) & CM APPL.46437/2024 (18 Days Delay in C.A.)

HARSH PACKAGING AND ANR .....Petitioners

Through: Dr. Prabhat Kumar and Mr. Karan Kanwal, Advs.

versus

PRINCIPAL COMMISSIONER OF CUSTOMS (IMPORT) AND ANR .....Respondents

Through: Mr. Gibran Naushad, SSC.
Mr. Anurag Ojha, Sr. St. Counsel with Mr. Subham Kumar, Mr. Vipul Kumar and Mr. Abhishek, Adv. for R-2

\+ W.P.(C) 3866/2024

CHAMAN LAL BHAMBRI .....Petitioner

Through: Dr. Prabhat Kumar and Mr. Karan Kanwal, Advs.

versus

PRINCIPAL COMMISSIONER OF CUSTOMS IMPORT AND ANR .....Respondents

Through: Mr. Aakarsh Srivastava, SC with Mr. Vaibhav Gupta, Adv. for R-1.

\+ W.P.(C) 3867/2024

CHAMAN LAL BHAMBRI HARSH PACKAGING .....Petitioner

Through: Dr. Prabhat Kumar and Mr. Karan Kanwal, Advs.

versus

PRINCIPAL COMMISSIONER OF CUSTOMS IMPORT AND ANR .....Respondents

Through: Mr. Aakarsh Srivastava, SC with Mr. Vaibhav Gupta, Adv. for R-1.

\+ W.P.(C) 3868/2024

CHAMAN LAL BHAMBRI .....Petitioner

Through: Dr. Prabhat Kumar and Mr. Karan Kanwal, Advs.

versus

PRINCIPAL COMMISSIONER OF CUSTOMS IMPORT AND ANR .....Respondents

Through: Mr. Aakarsh Srivastava, SC with Mr. Vaibhav Gupta, Adv. for R-1.

\+ W.P.(C) 3872/2024

CHAMAN LAL BHAMBRI MARUTI GRAPHICS .....Petitioner

Through: Dr. Prabhat Kumar and Mr. Karan Kanwal, Advs.

versus

PRINCIPAL COMMISSIONER OF CUSTOMS IMPORT AND ANR .....Respondents

Through: Mr. Aakarsh Srivastava, SC with Mr. Vaibhav Gupta, Adv. for R-1.

\+ W.P.(C) 3875/2024

CHAMAN LAL BHAMBRI (M/S U.S. ENTERPRISES) .....Petitioner

Through: Dr. Prabhat Kumar and Mr. Karan Kanwal, Advs.

versus

PRINCIPAL COMMISSIONER OF CUSTOMS IMPORT AND ANR .....Respondents

Through: Mr. Aakarsh Srivastava, SC with Mr. Vaibhav Gupta, Adv. for R-1.

\+ W.P.(C) 3877/2024

CHAMAN LAL BHAMBRI MALESHWARI PRINTING PRESS .....Petitioner

Through: Dr. Prabhat Kumar and Mr. Karan Kanwal, Advs.

versus

PRINCIPAL COMMISSIONER OF CUSTOMS IMPORT AND ANR .....Respondents

Through: Mr. Aakarsh Srivastava, SC with Mr. Vaibhav Gupta, Adv. for R-1.

\+ W.P.(C) 3881/2024 & CM APPL. 15994/2024 (Stay), 46457/2024 (delay of 19 days in filing the counter affidavit)

RAJVANI GRAPHICS TRADE AND ANR .....Petitioners

Through: Dr. Prabhat Kumar and Mr. Karan Kanwal, Advs.

versus

PRINCIPAL COMMISSIONER OF CUSTOMS IMPORT AND ANR .....Respondents

Through: Mr. Gibran Naushad, SSC.

\+ W.P.(C) 3885/2024

CHAMAN LAL BHAMBRI .....Petitioner

Through: Dr. Prabhat Kumar and Mr. Karan Kanwal, Advs.

versus

PRINCIPAL COMMISSIONER OF CUSTOMS IMPORT AND ANR .....Respondents

Through: Mr. Aakarsh Srivastava, SC with Mr. Vaibhav Gupta, Adv. for R-1.

\+ W.P.(C) 3933/2024
CHAMAN LAL BHAMBRI RAJVANI GRAPHICS TRADE .....Petitioner

Through: Dr. Prabhat Kumar and Mr. Karan Kanwal, Advs.

versus

PRINCIPAL COMMISSIONER OF CUSTOMS (IMPORT) AND ANR .....Respondents

Through: Mr. Aakarsh Srivastava, SC with Mr. Vaibhav Gupta, Adv. for R-1.

\+ W.P.(C) 3934/2024
CHAMAN LAL BHAMBRI MAN BHAVAN ARTS .....Petitioner

Through: Dr. Prabhat Kumar and Mr. Karan Kanwal, Advs.

versus

PRINCIPAL COMMISSIONER OF CUSTOMS IMPORT AND ANR .....Respondents

Through: Mr. Aakarsh Srivastava, SC with Mr. Vaibhav Gupta, Adv. for R-1.

\+ W.P.(C) 3935/2024
CHAMAN LAL BHAMBRI MAGNUM GRAPHICS .....Petitioner

Through: Dr. Prabhat Kumar and Mr. Karan Kanwal, Advs.

versus

PRINCIPAL COMMISSIONER OF CUSTOMS (IMPORT) AND ANR .....Respondents

Through: Mr. Aakarsh Srivastava, SC with Mr. Vaibhav Gupta, Adv. for R-1.
Mr. Anurag Ojha, Sr. St. Counsel with Mr. Subham

Kumar, Mr. Vipul Kumar and Mr. Abhishek, Adv. for R-2

\+ W.P.(C) 5529/2024 & CM APPL. 22745/2024 (Stay)

PRAKASH GARG & ORS. .....Petitioners

Through: Mr. A.K. Prasad, Mr. K.K. Anand, Ms. Surabhi Sinha, Mr. Prem Ranjan, Ms. Aakriti Anand and Ms. Sweety Gangmei, Advs.

versus

PRINCIPAL COMMISSIONER OF CUSTOMS IMPORTS & ORS. .....Respondents

Through: Mr. Aakarsh Srivastava, SC with Mr. Vaibhav Gupta, Adv. for R-1.
Mr. Anurag Ojha, Sr. St. Counsel with Mr. Subham Kumar, Mr.Vipul Kumar and Mr. Abhishek, Adv. for R-2
Mr. T.P.Singh, SGC for R-3.

\+ W.P.(C) 5767/2024 & CM APPL. 23891/2024

SHREE GANESH METAL CO. .....Petitioner

Through: Mr. Prem Ranjan Kumar, and Ms. Poojan Malhotra, Advocates.

versus

THE ADDITIONAL COMMISSIONER OF CUSTOMS IMPORT & ANR. .....Respondents

Through: Mr. Anurag Ojha, Sr. St. Counsel with Mr. Subham Kumar, Mr. Vipul Kumar and Mr. Abhishek, Adv. for R-2

\+ W.P.(C) 5896/2024

M/S KASTURI INTERNATIONAL PVT. LTD. & ORS. .....Petitioners

Through: Mr. Arjun Raghavendra and Mr. Piyush Deshpande, Advs.

versus

PRINCIPAL COMMISSIONER OF CUSTOMS (IMPORT) & ANR. .....Respondents

Through: Mr. R.Ramchandran, SSC. Mr. Anurag Ojha, Sr. St. Counsel with Mr. Subham Kumar, Mr. Vipul Kumar and Mr. Abhishek, Adv. for R-2

\+ W.P.(C) 5952/2024 & CM APPL. 24739/2024 (stay)

M/S LAKSHMAN OVERSEAS .....Petitioner

Through: Mr. Deepak Gandhi, Mr. Sumit Kumar Jha and Mr. Ricky Chaudhary, Advs.

versus

PRINCIPAL COMMISSIONER OF CUSTOMS (IMPORT) .....Respondent

Through: Mr. Harpreet Singh, SSC

\+ W.P.(C) 6147/2024 & CM APPL. 25568/2024 (stay)

SUPERTECH ENGINEERS .....Petitioner

Through: Dr. Prabhat Kumar and Mr. Karan Kanwal, Advs.

versus

COMMISSIONER OF CENTRAL TAX (DELHI WEST) AND ANR .....Respondents

Through: Mr. Gibran Naushad, SSC.

\+ W.P.(C) 6190/2024 & CM APPL. 25739/2024 (Stay)

ECHO INTERNATIONAL .....Petitioner

Through: Dr. Prabhat Kumar and Mr. Karan Kanwal, Advs.

versus

COMMISSIONER OF CUSTOMS EXPORT
AND ANR .....Respondent

Through: Mr. Anurag Ojha, Sr. St. Counsel with Mr. Subham Kumar, Mr. Vipul Kumar and Mr. Abhishek, Adv. for R-2

\+ W.P.(C) 6253/2024 & CM APPL. 26068/2024 (Stay)

DAILY AJIT PUNJABI PUNJABI NEWSPAPER, SADHU SINGH HAMDARD TRUST & ANR. .....Petitioners

Through: Mr. Prem Ranjan Kumar and Ms. Poojan Malhotra, Advocates.

versus

THE PRINCIPAL COMMISSIONER OF
CUSTOMS & ANR .....Respondents

Through: Mr. R.Ramchandran, Sr. SC. Mr. Anurag Ojha, Sr. St. Counsel with Mr. Subham Kumar, Mr. Vipul Kumar and Mr. Abhishek, Adv. for R-2

\+ W.P.(C) 6429/2024 & CM APPL. 26808/2024 (Interim Relief), CM APPL. 26810/2024 (addl record)

SYONA SPA .....Petitioner

Through: Mr. J.K.Mittal, Ms. Vandana Mittal and Mr. Mukesh Chaudhary, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Aditya Singla, SSC with Ms. Charu Sharma, Mr. Ritvik Saha and Mr. Raghav Bakshi, Advocates.

\+ W.P.(C) 6524/2024

B. E. CONTRACTS (P) LTD .....Petitioner

Through: Mr. Ravi Kant Chandok, Mr. Umesh Sarwal, Mr. Vasudev Lalvani, Mr. Tushar Sahni and Mr.Siddharth Sarwal, Advs.

versus

COMMISSIONER, CENTRAL GOODS AND SERVICES TAX AUDIT - II, DELHI .....Respondent

Through: Mr. Harpreet Singh, SSC with Mr. Atul Tripathi, SSC, CBIC with Mr. V.K.Attri, Mr. Amresh Jha and Ms. Preeti Kumari, Advocates.

\+ W.P.(C) 6545/2024 & CM APPL. 27291/2024

DELHI INTERNATIONAL AIRPORT LIMITED .....Petitioner

Through: Mr. Sparsh Bhargava, Ms. Ishita Farsaiya and Ms. Vanshika Taneja, Advs.

versus

COMMISSIONER OF CGST AND CENTRAL EXCISE .....Respondent

Through: Mr. Aditya Singla, SSc with Ms. Charu Sharma, Mr. Ritvik Saha and Mr. Raghav Bakshi, Advocates.

\+ W.P.(C) 6548/2024 & CM APPL. 27294/2024 (Interim Relief) ,

GMR AIRPORT INFRASTRUCTURE LIMITED (EARLIER KNOWN AS GMR INFRASTRUCTURE LIMITED) .....Petitioner

Through: Mr. Sparsh Bhargava, Ms. Ishita Farsaiya and Ms. Vanshika Taneja, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Asheesh Jain, CGSC with Mr. Gaurav Kumar and Mr. Yashaswi S.K.Chocksey, Govt. Pleader. For R-1.
Ms. Sonu Bhatnagar, Sr. St. Counsel with Ms. Nishtha Mittal, Ms. Apurva Singh and Mr. K.S.Mary Jonet, Adv. for R-2.
Mr. Ramchandran, SR. SC.

\+ W.P.(C) 6714/2024 & CM APPL. 27966/2024 (Stay), CM APPL. 46258/2024 (delay of 18 days)

M/S J.R. INTERNATIONAL .....Petitioner

Through: Mr. Abhas Mishra and Ms. Neha Singhal, Advs.

versus

PRINCIPAL COMMISSIONER OF CUSTOMS AND ANR .....Respondents

Through: Mr. Gibran Naushad, SSC.
Mr. Harpreet Singh, SSC for R-2.

\+ W.P.(C) 7327/2024 & CM APPL. 30571/2024 (Stay)

SHRI SURINDER GARG & ORS. .....Petitioners

Through: Mr. A.K. Prasad, Mr. K.K. Anand, Ms. Surabhi Sinha, Mr. Prem Ranjan, Ms. Aakriti Anand and Ms. Sweety Gangmei, Advs.

versus

PRINCIPAL COMMISSIONER OF CUSTOMS IMPORTS & ORS. .....Respondents

Through: Mr. Anurag Ojha, SSC with Mr. Subham Kumar, Mr. Vipul Kumar and Mr. Abhishek, Adv. for R-2

Mr. Shankar Kumar Jha, SPC, UOI.

\+ W.P.(C) 7355/2024 & CM APPL. 30706/2024 (Stay)
ELOF HANSSON INDIA PRIVATE LIMITED .....Petitioner

Through: Mr. Tarun Gulati, Sr. Adv. with Ms. Shruti Kulkarni, Mr. Suresh Varanasi, Mr. Harpreet Singh Ajmani, Mr. Sagnik Chatterjee and Ms. Gunjan Pande, Advs.

versus

PRINCIPAL COMMISSIONER INLAND CONTAINER & ANR. .....Respondents

Through: Mr. Aakarsh Srivastava, St. Counsel with Mr. Vaibhav Gupta, Adv. for R-1 and 2.
Mr. Anurag Ojha, Sr. St. Counsel with Mr. Subham Kumar, Mr. Vipul Kumar and Mr. Abhishek, Advs.

\+ W.P.(C) 8074/2024 & CM APPL. 33277/2024 (Stay), CM APPL. 46394/2024
THERMO CONTROL AND INSTRUMENTS & ORS. .....Petitioners

Through: Mr. Pavan Narang, Mr. Himanshu Sethi, Mr. K.K.Malhotra, Mr. K.K.Bhalla and Ms. Aishwarya Chhabra, Advs.

versus

PRINCIPAL COMMISSIONER OF CUSTOMS & ORS. .....Respondents

Through: Mr. Anurag Ojha, Sr. St. Counsel with Mr. Subham Kumar, Mr. Vipul Kumar and Mr. Abhishek, Adv. for R1 to R3.

\+ W.P.(C) 8077/2024 & CM APPL. 33284/2024 (Stay), CM APPL. 46394/2024

CHANDER MOHAN AND CO. .....Petitioner

Through: Mr. Pavan Narang, Mr. Himanshu Sethi, Mr. K.K.Malhotra, Mr. K.K.Bhalla and Ms. Aishwarya Chhabra, Advs.

versus

PRINCIPAL COMMISSIONER OF CUSTOMS & ORS. .....Respondents

Through: Mr. Gibran Naushad, SSC.

\+ W.P.(C) 8355/2024 & CM APPL. 34337/2024 (Stay)

ASCENT CONSTRUCTIONS PVT LTD .....Petitioner

Through: Mr. Ravi Kant Chandok, Mr. Umesh Sarwal, Mr. Vasudev Lalvani, Mr. Tushar Sahni and Mr. Siddharth Sarwal, Advs.

versus

COMMISSIONER, CENTRAL GOODS AND SERVICES TAX DELHI (EAST) .....Respondent

Through: Mr. Akshay Amritanshu, Sr. St. Counsel with Mr. Samyak Jain, Ms. Pragya Upadhyay and Ms. Drishti Saraf, Advs.

\+ W.P.(C) 10020/2023 & CM APPL. 38629/2023 (Stay)

ABDUL KHALIQUE .....Petitioner

Through: Mr. Ravi Kant Chandok, Mr. Umesh Sarwal, Mr. Vasudev Lalvani, Mr. Tushar Sahni and Mr. Siddharth Sarwal, Advs.

versus

COMMISSIONER, CENTRAL GOODS & SERVICES TAX, DELHI (NORTH) .....Respondent

Through: Mr. Atul Tripathi, SSC with Mr.

V.K.Attri, Mr. Amresh Jha and Ms. Preeti Kumari, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

YASHWANT VARMA, J.

TABLE OF CONTENTS

I. PREFACE

1. This batch of writ petitions seek the quashing of the **Show Cause Notices**[1] and pending adjudication proceedings arising out of the

[1] SCNs

Customs Act, 1962[2], the **Finance Act, 1994**[3] and the **Central Goods and Services Tax, 2017**[4]. Additionally, in some of the writ petitions forming part of this batch, orders-in-original passed by the respondents on conclusion of the SCN proceedings are also assailed.

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.

3. Insofar as the writ petitions pertaining to the Customs Act are concerned, the petitioners also seek to draw sustenance from certain statutory amendments that came to be introduced by virtue of **Finance Act, 2018**[5] and in terms of which the phrase "*where it is possible to do so*", as previously occurring in Section 28 (9) came to be omitted. The 2018 Act also saw the insertion of a Second Proviso to Section 28(9) and which provided that in case of a failure to conclude adjudication proceedings even within the extended period, would trigger a legal fiction of it being presumed that the SCN had never been issued. The other significant amendment which came to be made to Section 28 was

[2] Customs Act
[3] 1994 Act
[4] CGST Act
[5] 2018 Act

the introduction of sub-section (9A). However, we propose to review the impact of this amendment in subsequent parts of this decision.

4. The aforesaid amendments, the petitioners argue, are a manifestation of the legislative intent of the timeframes as prescribed being strictly adhered to. Without prejudice to the above, it was submitted that even if the SCNs' were to be tested on the basis of the existence of the phrase "*where it is possible to do so*" and the precept of reasonable time as evolved by courts, it would be apparent that the delay in the present cases, and which in some cases has stretched to decades, is not liable to be ignored and the impugned proceedings liable to be quashed.

5. The respondents, on the other hand, had principally asserted that delay cannot and by itself constitute a sufficient ground to interdict a pending adjudication. They had urged us to bear in consideration that the principle of adjudication being concluded within a reasonable period is a question which must necessarily be answered in the backdrop of individual facts which obtain. The submission essentially was that mere delay cannot constitute a basis which can be universally applied *de hors* the facts of a particular case.

6. The respondents had also sought to explain the delay in the context of the placement of matters in the call book, a flux in the legal position considering the decisions rendered by the Supreme Court in **Commr. of Customs vs. Sayed Ali**[6] and **Canon India (P) Ltd. vs. Commr. of Customs**[7]. Those decisions, it becomes pertinent to note, had dealt with the issue of whether an officer of the **Directorate of**

[6] (2011) 3 SCC 537
[7] (2021) 18 SCC 563; Canon I

Revenue Intelligence[8] could be deemed to be a "proper officer", an expression which appears repeatedly in the Customs Act, and could exercise or commence a process of enquiry or adjudication. According to the respondents, the doubt which came to be cast by these judgments on action initiated by officers of the DRI also came to be noticed by this Court in **Mangali Impex Ltd. vs. UOI**[9].

7. *Mangali Impex* was concerned with the **Customs (Amendment and Validation) Act, 2011**[10] and pursuant to which Section 28(11) had come to be introduced in the Customs Act. While we shall have an occasion to deal with the aforenoted judgments as well as the statutory amendments which came to be introduced in the latter part of this decision, suffice it to note that according to the respondents, the delay in adjudication was neither deliberate nor designed. According to them, it was the aforementioned intervening factors that led to the SCN proceedings not being concluded with desired expedition.

II. THE STATUTORY FRAMEWORK

8. Having broadly noticed the principal submissions which were addressed by respective sides, this would constitute an appropriate juncture to notice the salient provisions of the three principal statutes with which the impugned adjudication proceedings are concerned.

9. Insofar as the Customs Act is concerned, while undisputedly the exporter or the importer, as the case may be, stands enabled to follow the route of self-assessment and declaration, those once endorsed are undoubtedly liable to be viewed as having been duly assessed in

[8] DRI
[9] 2016 SCC OnLine Del 2597
[10] Amendment and Validation Act

accordance with the provisions of that statute. Section 28 of the Customs Act is concerned with duties and interest that may have been either not levied, paid, short-levied, short-paid, or erroneously refunded. It also extends to instances where levy of duty would have escaped or a refund erroneously granted by reason of collusion, wilful misstatement or suppression of facts by the importer or the exporter. The provision as it exists today is reproduced hereinbelow:

> "[**28. Recovery of** [**duties not levied or not paid or short-levied or short-paid**] **or erroneously refunded**.—(1) Where any [duty has not been levied or not paid or has been short-levied or short-paid] or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any wilful mis-statement or suppression of facts,—
>
> (*a*) the proper officer shall, within [two years] from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied [or paid] or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:
>
> [**Provided** that before issuing notice, the proper officer shall hold pre-notice consultation with the person chargeable with duty or interest in such manner as may be prescribed;]
>
> (*b*) the person chargeable with the duty or interest, may pay before service of notice under clause (*a*) on the basis of,—
>
> (*i*) his own ascertainment of such duty; or
>
> (*ii*) the duty ascertained by the proper officer,
>
> the amount of duty along with the interest payable thereon under Section 28-AA or the amount of interest which has not been so paid or part-paid:
>
> [**Provided** that the proper officer shall not serve such show cause notice, where the amount involved is less than Rupees One hundred.]
>
> (2) The person who has paid the duty along with interest or amount of interest under clause (*b*) of sub-section (1) shall inform the proper officer of such payment in writing, who, on receipt of such information, shall not serve any notice under clause (*a*) of that sub-

section in respect of the duty or interest so paid or any penalty leviable under the provisions of this Act or the rules made thereunder in respect of such duty or interest.

[**Provided** that where notice under clause (*a*) of sub-section (1) has been served and the proper officer is of the opinion that the amount of duty along with interest payable thereon under Section 28-AA or the amount of interest, as the case may be, as specified in the notice, has been paid in full within thirty days from the date of receipt of the notice, no penalty shall be levied and the proceedings against such person or other persons to whom the said notice is served under clause (*a*) of sub-section (1) shall be deemed to be concluded.]

(3) Where the proper officer is of the opinion that the amount paid under clause (*b*) of sub-section (1) falls short of the amount actually payable, then, he shall proceed to issue the notice as provided for in clause (*a*) of that sub-section in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of [two years] shall be computed from the date of receipt of information under sub-section (2).

(4) Where any duty has not been [levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,—

(*a*) collusion; or

(*b*) any wilful misstatement; or

(*c*) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been [so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

(5) Where any [duty has not been levied or not paid or has been short-levied or short-paid] or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful misstatement or suppression of facts by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub-section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under Section 28-AA and the penalty equal to [fifteen per cent] of the duty specified in the notice or the duty so accepted by

that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.

(6) Where the importer or the exporter or the agent or the employee of the importer or the exporter, as the case may be, has paid duty with interest and penalty under sub-section (5), the proper officer shall determine the amount of duty or interest and on determination, if the proper officer is of the opinion—

(*i*) that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub-section (4), shall, without prejudice to the provisions of Sections 135, 135-A and 140 be deemed to be conclusive as to the matters stated therein; or

(*ii*) that the duty with interest and penalty that has been paid falls short of the amount actually payable, then, the proper officer shall proceed to issue the notice as provided for in clause (*a*) of sub-section (1) in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of [two years] shall be computed from the date of receipt of information under sub-section (5).

(7) In computing the period of [two years] referred to in clause (*a*) of sub-section (1) or five years referred to in sub-section (4), the period during which there was any stay by an order of a court or tribunal in respect of payment of such duty or interest shall be excluded.

[(7-A) Save as otherwise provided in clause (*a*) of sub-section (1) or in sub-section (4), the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed, and the provisions of this section shall apply to such supplementary notice as if it was issued under the said sub-section (1) or sub-section (4).]

(8) 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 not being in excess of the amount specified in the notice.

(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.]

[(9-A) 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.]

(10) Where an order determining the duty is passed by the proper officer under this section, the person liable to pay the said duty shall pay the amount so determined along with the interest due on such amount whether or not the amount of interest is specified separately.

[(10-A) Notwithstanding anything contained in this Act, where an order for refund under sub-section (2) of Section 27 is modified in any appeal and the amount of refund so determined is less than the amount refunded under said sub-section, the excess amount so refunded shall be recovered along with interest thereon at the rate fixed by the Central Government under Section 28-AA, from the date of refund up to the date of recovery, as a sum due to the Government.

(10-B) A notice issued under sub-section (4) shall be deemed to have been issued under sub-section (1), if such notice demanding duty is held not sustainable in any proceeding under this Act, including at any stage of appeal, for the reason that the charges of collusion or any wilful mis-statement or suppression of facts to evade duty has not been established against the person to whom such notice was issued and the amount of duty and the interest thereon shall be computed accordingly.]

[(11) Notwithstanding anything to the contrary contained in any judgment, decree or order of any court of law, tribunal or other authority, all persons appointed as Officers of Customs under sub-section (1) of Section 4 before the 6th day of July, 2011, shall be deemed to have and always had the power of assessment under Section 17 and shall be deemed to have been and always had been the proper officers for the purposes of this section.]

Explanation 1.—For the purposes of this section, "relevant date" means,—

(*a*) in a case where duty is [not levied or not paid or short-levied or short-paid], or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;

(*b*) in a case where duty is provisionally assessed under Section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be;

(*c*) in a case where duty or interest has been erroneously refunded, the date of refund;

(*d*) in any other case, the date of payment of duty or interest.

Explanation 2.—For the removal of doubts, it is hereby declared that any non-levy, short-levy or erroneous refund before the date on which the Finance Bill, 2011 receives the assent of the President, shall continue to be governed by the provisions of Section 28 as it stood immediately before the date on which such assent is received.]

[*Explanation 3*.—For the removal of doubts, it is hereby declared that the proceedings in respect of any case of non-levy, short-levy, non-payment, short-payment or erroneous refund where show cause notice has been issued under sub-section (1) or sub-section (4), as the case may be, but an order determining duty under sub-section (8) has not been passed before the date on which the Finance Bill, 2015 receives the assent of the President, shall, without prejudice to the provisions of Sections 135, 135-A and 140, as may be applicable, be deemed to be concluded, if the payment of duty, interest and penalty under the proviso to sub-section (2) or under sub-section (5), as the

case may be, is made in full within thirty days from the date on which such assent is received.]

[*Explanation 4*.—For the removal of doubts, it is hereby declared that notwithstanding anything to the contrary contained in any judgment, decree or order of the Appellate Tribunal or any Court or in any other provision of this Act or the rules or regulations made thereunder, or in any other law for the time being in force, in cases where notice has been issued for non-levy, short-levy, non-payment, short-payment or erroneous refund, prior to the 29th day of March, 2018, being the date of commencement of the Finance Act, 2018 (13 of 2018), such notice shall continue to be governed by the provisions of Section 28 as it stood immediately before such date.]"

10. Section 28(1) deals with situations where the proper officer comes to form the opinion that duty or interest leviable has either not been levied or paid, escaped an accurate assessment as also cases where a refund may have come to be incorrectly granted. In such an eventuality, the provision places the proper officer under the obligation to issue notice to the exporter or the importer to show cause why the duty or interest leviable should not be recovered. The adjudicatory process which comes to be initiated culminates in a determination of the duty leviable and recovered in accordance with the Section 28(3) and in terms of which the proper officer would compute the amount of duty or interest, which according to it, had either escaped being levied or had been short-levied or short-paid.

11. Section 28, by virtue of sub-section (4), thereafter proceeds to construct and lay in place a similar procedure where the allegation of duty having escaped levy or having been short-levied, short-paid or erroneously refunded, occurred by virtue of collusion, wilful misstatement or suppression of facts. Hereto, the proper officer, upon formation of an opinion that sub-section (4) would be attracted, is obliged to issue a notice calling upon the importer or exporter to pay

the amounts that may be specified therein. Where proceedings are referable to Section 28(4), and in cases where the allegation of collusion, wilful misstatement or suppression of facts be contested, the proper office would proceed to undertake a determination of the duty or interest payable in terms contemplated under Section 28(6).

12. While the action referable to Section 28(1) can be initiated within two years from the relevant date, the statute prescribes a timeframe of five years in respect of cases which would fall within the ambit of sub-section (4) thereof. The statute proceeds further to set out the timeframes within which the adjudicatory proceedings are liable to be concluded dependent on whether they be referable to sub-section (1) or sub-section (4) of Section 28. Explanation 1 to Section 28 defines the expression "relevant date" and which constitutes the starting point for the purposes of computation of the two and five year period for initiation of action under sub-sections (1) and (4) respectively.

13. In the case of the former, Section 28(9) postulates that the amount of duty or interest which is alleged to have escaped assessment would have to be determined within a period of six months from the date of notice while in the case of an import or an export which is sought to be reopened under sub-section (4), the proceedings would have to be completed within one year from the date of notice.

14. It is pertinent to note that both clauses (a) and (b) of Section 28(9) had, prior to 2018, employed the expression "where it is possible to do so". This ultimately came to be omitted by the 2018 Act. However, in terms of that very amending statute, the Customs Act also saw the insertion of a sub-section (9-A) in Section 28 and which sought

to deal with contingencies where a proper officer may be unable to determine the amount of duty or interest. In terms of that provision, in situations that are spoken of in clauses (a) to (d) of sub-section (9-A), the proper officer stands relieved from complying with the time frames erected by virtue of Section 28(9). The contingencies which are spoken of in Section 28(9-A) range from the pendency of an appeal in a similar matter before an Appellate Tribunal, the High Court or the Supreme Court, an order of stay that may operate, the **Central Board of Indirect Taxes and Customs**[11] which was earlier known as the **Central Board of Excise and Customs**[12] having issued a direction or order to keep proceedings of adjudication in abeyance as well as where the Settlement Commission may have admitted an application made by an exporter or the importer.

15. Reverting then to the principal provision we take note of Explanation 2 and which provides that all cases of non-levy, short-levy or erroneous refund, pertaining to a period prior to the date when Finance Bill, 2011 received the assent of the President, would be governed by Section 28 as it stood before the date on which such assent was received. Of equal significance is Explanation 4, and which prior to the shape in which it exists presently in the statute and prior to the introduction of amendments by virtue of the **Finance Act, 2020**[13], had read as follows:

> "*Explanation 4*.—For the removal of doubts, it is hereby declared that in cases where notice has been issued for non-levy, not paid, short-levy or short-paid or erroneous refund after the 14th day of May, 2015, but before the date on which the Finance Bill, 2018

[11] Board/CBIC
[12] Board/CBEC
[13] 2020 Act

> receives the assent of the President, they shall continue to be governed by the provisions of Section 28 as it stood immediately before the date on which such assent is received."

16. Explanation 4 as it exists now, and which came to be recast with retrospective effect from 29 March 2018 as per the provisions of the 2020 Act, provides that notwithstanding any judgment, decree or order, any notice pertaining to non-levy, short-levy or erroneous refunds, issued prior to 29 March 2018 (the date of commencement of 2018 Act) would be governed by the provisions of Section 28, as they stood immediately before that date.

17. We then proceed further to notice similar provisions which stand incorporated in the 1994 Act. Section 73 of the 1994 Act incorporates the following provision with respect to non-levy, short-levy or erroneous refund of tax:

> "[**73. Recovery of service tax not levied or paid or short-levied or short-paid or erroneously refunded**.—(1) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the [Central Excise Officer] may, within [thirty months] from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:
>
> **Provided** that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of—
>
> (*a*) fraud; or
>
> (*b*) collusion; or
>
> (*c*) wilful mis-statement; or
>
> (*d*) suppression of facts; or
>
> (*e*) contravention of any of the provisions of this chapter or of the rules made thereunder with intent to evade payment of service tax,

by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words "[thirty months]", the words "five years" had been *substituted*.

Explanation.—Where the service of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing the aforesaid period of [thirty months] or five years, as the case may be.

[(1-A) Notwithstanding anything contained in sub-section (1) (except the period of [thirty months] of serving the notice for recovery of service tax), the Central Excise Officer may serve, subsequent to any notice or notices served under that sub-section, a statement, containing the details of service tax not levied or paid or short levied or short paid or erroneously refunded for the subsequent period, on the person chargeable to service tax, then, service of such statement shall be deemed to be service of notice on such person, subject to the condition that the grounds relied upon for the subsequent period are same as are mentioned in the earlier notices.]

[(1-B) Notwithstanding anything contained in sub-section (1), in a case where the amount of service tax payable has been self-assessed in the return furnished under sub-section (1) of Section 70, but not paid either in full or in part, the same shall be recovered along with interest thereon in any of the modes specified in Section 87, without service of notice under sub-section (1).]

(2) The [Central Excise Officer] shall, after considering the representation, if any, made by the person on whom notice is served under sub-section (1), determine the amount of service tax due from, or erroneously refunded to, such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined:

[* * *].]

[(2-A) Where any appellate authority or tribunal or court concludes that the notice issued under the proviso to sub-section (1) is not sustainable for the reason that the charge of,—

(*a*) fraud; or

(*b*) collusion; or

(*c*) wilful mis-statement; or

(*d*) suppression of facts; or

(*e*) contravention of any of the provisions of this Chapter or the rules made thereunder with intent to evade payment of service tax,

has not been established against the person chargeable with the service tax, to whom the notice was issued, the Central Excise Officer shall determine the service tax payable by such person for the period of [thirty months], as if the notice was issued for the

offences for which limitation of [thirty months] applies under sub-section (1).]

(3) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person chargeable with the service tax, or the person to whom such tax refund has erroneously been made, may pay the amount of such service tax, chargeable or erroneously refunded, on the basis of his own ascertainment thereof, or on the basis of tax ascertained by a Central Excise Officer before service of notice on him under sub-section (1) in respect of such service tax, and inform the [Central Excise Officer] of such payment in writing, who, on receipt of such information shall not serve any notice under sub-section (1) in respect of the amount so paid:

Provided that the [Central Excise Officer] may determine the amount of short-payment of service tax or erroneously refunded service tax, if any, which in his opinion has not been paid by such person and, then, the [Central Excise Officer] shall proceed to recover such amount in the manner specified in this section, and the period of "[thirty months]" referred to in sub-section (1) shall be counted from the date of receipt of such information of payment.

[*Explanation-1*].—For the removal of doubts, it is hereby declared that the interest under Section 75 shall be payable on the amount paid by the person under this sub-section and also on the amount of short payment of service tax or erroneously refunded service tax, if any, as may be determined by the [Central Excise Officer], but for this sub-section.

[*Explanation-2*.—For the removal of doubts, it is hereby declared that no penalty under any of the provisions of this Act or the rules made thereunder shall be imposed in respect of payment of service tax under this sub-section and interest thereon.]

(4) Nothing contained in sub-section (3) shall apply to a case where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of—

(*a*) fraud; or

(*b*) collusion; or

(*c*) wilful mis-statement; or

(*d*) suppression of facts; or

(*e*) contravention of any of the provisions of this chapter or of the rules made thereunder with intent to evade payment of service tax.

(4-A) [* * *]

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

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

(5) The provisions of sub-section (3) shall not apply to any case where the service tax had become payable or ought to have been paid before the 14th day of May, 2003.

(6) For the purposes of this section, "relevant date" means,—

(*i*) in the case of taxable service in respect of which service tax has not been levied or paid or has been short-levied or short-paid—

(*a*) where under the rules made under this chapter, a periodical return, showing particulars of service tax paid during the period to which the said return relates, is to be filed by an assessee, the date on which such return is so filed;

(*b*) where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the said rules;

(*c*) in any other case, the date on which the service tax is to be paid under this chapter or the rules made thereunder;

(*ii*) in a case where the service tax is provisionally assessed under this chapter or the rules made thereunder, the date of adjustment of the service tax after the final assessment thereof;

(*iii*) in a case where any sum, relating to service tax, has erroneously been refunded, the date of such refund.]"

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.

19. The CGST Act also adopts similar provisions for purposes of determination of tax not paid, short-paid or erroneously refunded in the shape of Sections 73 and 74. Both those provisions, which came to be enforced from 01 July 2017 are reproduced hereinbelow:-

> "**73. Determination of tax [pertaining to the period up to Financial Year 2023-24,] not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts**.—(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under Section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.
>
> (2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.
>
> (3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.
>
> (4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.
>
> (5) The person chargeable with tax may, before service of notice under sub-section (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under Section 50 on the basis of his own ascertainment of

such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under Section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.

(11) Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.

[(12) The provisions of this section shall be applicable for determination of tax pertaining to the period up to Financial Year 2023-24.]

xxxx xxxx xxxx

74. Determination of tax [,pertaining to the period up to Financial Year 2023-24,] not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of

facts.—(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under Section 50 and a penalty equivalent to the tax specified in the notice.

(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of Section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under Section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under Section 50 and a penalty equivalent to twenty-five per cent. of such tax within thirty

days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under Section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

[(12) The provisions of this section shall be applicable for determination of tax pertaining to the period up to Financial Year 2023-24.]

Explanation 1.—For the purposes of Section 73 and this section,—

(*i*) the expression "all proceedings in respect of the said notice" shall not include proceedings under Section 132;

(*ii*) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under Section 73 or Section 74, the proceedings against all the persons liable to pay penalty under [Sections 122 and 125] are deemed to be concluded.

Explanation 2.—[* * *]"

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.

III. THE "PROPER OFFICER" CONUNDRUM

22. Before proceeding further, we deem it appropriate to take note of certain judicial interventions and which cast a doubt on the jurisdiction and authority of officers of the DRI to undertake an adjudication or determination of duty/interest under the Customs Act. In *Sayed Ali*, the Supreme Court was called upon to examine the correctness of the view expressed by the **Customs Excise & Service Tax Appellate Tribunal**[14], namely, that the Commissioner of Customs (Preventive) would not be liable to be recognised as a "proper officer" as defined in

[14] CESTAT

Section 2(34) of the Customs Act. Ruling on that issue, the Supreme Court in *Sayed Ali* held that on a conjoint reading of Sections 2(34) and 28 of the Customs Act, only a customs officer who may have been assigned the function of assessment in respect of entities falling in a particular jurisdictional area could be viewed as competent to issue notice and undertake an adjudication. The Supreme Court also negated the Revenue's contention that once territorial jurisdiction had come to be conferred upon the Commissioner of Customs (Preventive), the said authority would be liable to be treated as a "proper officer" for purposes of Section 28. This becomes evident from a reading of the following paragraphs of *Sayed Ali*:

> "**20.** From a conjoint reading of Sections 2(34) and 28 of the Act, it is manifest that only such a Customs Officer who has been assigned the specific functions of assessment and reassessment of duty in the jurisdictional area where the import concerned has been affected, by either the Board or the Commissioner of Customs, in terms of Section 2(34) of the Act is competent to issue notice under Section 28 of the Act. Any other reading of Section 28 would render the provisions of Section 2(34) of the Act otiose inasmuch as the test contemplated under Section 2(34) of the Act is that of specific conferment of such functions.
>
> **21.** Moreover, if the Revenue's contention that once territorial jurisdiction is conferred, the Collector of Customs (Preventive) becomes a "proper officer" in terms of Section 28 of the Act is accepted, it would lead to a situation of utter chaos and confusion, inasmuch as all officers of Customs, in a particular area be it under the Collectorate of Customs (Imports) or the Preventive Collectorate, would be "proper officers". In our view, therefore, it is only the officers of Customs, who are assigned the functions of assessment, which of course, would include reassessment, working under the jurisdictional Collectorate within whose jurisdiction the bills of entry or baggage declarations had been filed and the consignments had been cleared for home consumption, will have the jurisdiction to issue notice under Section 28 of the Act.
>
> **xxxx xxxx xxxx**
>
> **24.** Nothing has been brought on record to show that the Collector of Customs (Preventive), who had issued the show-cause notices was

> assigned the functions under Section 28 of the Act as "proper officer" either by the Board or the Collector/Commissioner of Customs. We are convinced that Notifications Nos. 250-Cus. and 251-Cus., both dated 27-8-1983, issued by the Central Government in exercise of the powers conferred by sub-section (1) of the Section 4 of the Act, appointing Collector of Customs (Preventive), etc. to be the Collector of Customs for Bombay, Thane and Kolaba Districts in the State of Maharashtra did not ipso facto confer jurisdiction on him to exercise power entrusted to the "proper officers" for the purpose of Section 28 of the Act."

23. A similar issue again arose for consideration of the Supreme Court in *Canon I.* On this occasion, the Supreme Court was called upon to answer whether officers of the DRI had the authority to initiate proceedings referable to Section 28(4) of the Customs Act. In *Canon I*, the Supreme Court ultimately came to hold against the Revenue when it came to render a finding that the Additional Director of the DRI would not be the "proper officer". We deem it apposite to extract the following paragraphs from that decision:

> "**16.** It is obvious that the reassessment and recovery of duties i.e. contemplated by Section 28(4) is by the same authority and not by any superior authority such as appellate or revisional authority. It is, therefore, clear to us that the Additional Director General of DRI was not "the" proper officer to exercise the power under Section 28(4) and the initiation of the recovery proceedings in the present case is without any jurisdiction and liable to be set aside.
>
> **17.** At this stage, we must also examine whether the Additional Director General of the DRI who issued the recovery notice under Section 28(4) was even a proper officer. The Additional Director General can be considered to be a proper officer only if it is shown that he was a Customs Officer under the Customs Act. In addition, that he was entrusted with the functions of the proper officer under Section 6 of the Customs Act. The Additional Director General of the DRI can be considered to be a Customs Officer only if he is shown to have been appointed as Customs Officer under the Customs Act.
>
> **xxxx xxxx xxxx**
>
> **23.** If it was intended that officers of the Directorate of Revenue Intelligence who are officers of the Central Government should be

> entrusted with functions of the Customs Officers, it was imperative that the Central Government should have done so in exercise of its power under Section 6 of the Act. The reason why such a power is conferred on the Central Government is obvious and that is because the Central Government is the authority which appoints both the officers of the Directorate of Revenue Intelligence which is set up under the Notification dated 4-12-1957 issued by the Ministry of Finance and Customs Officers who, till 11-5-2002, were appointed by the Central Government. The notification which purports to entrust functions as proper officer under the Customs Act has been issued by the Central Board of Excise and Customs in exercise of non-existing power under Section 2(34) of the Customs Act. The notification is obviously invalid having been issued by an authority which had no power to do so in purported exercise of powers under a section which does not confer any such power.
>
> **xxxx xxxx xxxx**
>
> **25.** We, therefore, hold that the entire proceeding in the present case initiated by the Additional Director General of the DRI by issuing show-cause notices in all the matters before us are invalid without any authority of law and liable to be set aside and the ensuing demands are also set aside."

The view expressed in *Canon I* thus affirmed the position which had come to be enunciated in *Sayed Ali*.

24. Between the judgments in *Sayed Ali* and *Canon I* coming to be pronounced, the Amendment and Validation Act came to be promulgated. By virtue of that statute, sub-section (11) came to be inserted in Section 28 and which essentially provided that notwithstanding any judgment or order of a court of law, officers attached to the Commissionerate of Customs (Preventive), as well as the DRI would be "deemed to have and have always had the power" of assessment under Section 17 and that they would be always deemed to have been "proper officers" for the purposes of Section 28.

25. The validity of this amendment came to be questioned before this Court in *Mangali Impex*. Our Court in *Mangali Impex* came to record the following conclusions:

> "**61.** Keeping the above principles in mind when section 28 has been recasted by Act 8 of 2011 with effect from April 8, 2011 read with section 28(11) which was introduced by the Customs (Amendment and Validation) Act, 2011 with effect from September 16, 2011, the position that emerges is as under :
>
> (i) Section 28(11) states that all persons appointed as customs officers prior to July 6, 2011 will be deemed to always have had the power of assessment under section 17 and shall be deemed to always have been "proper officers". Further, this is notwithstanding anything to the contrary in any judgment, decree or order of any court of law. While the said provision is intended to overcome the defect pointed out in the decision of the Supreme Court in Sayed Ali [2011] 7 GSTR 338 (SC), section 28(11) of the Act does not state that it would operate notwithstanding anything contained either in the Act or any other Act for the time being in force. In other words, the Legislature has not made it explicit that section 28(11) would prevail notwithstanding anything contained in Explanation 2 to section 28 of the Act.
>
> (ii) On the contrary, Explanation 2 which, as it presently stands, appears after section 28(11) of the Act as already stood enacted with effect from April 8, 2011 opens with the words "for the removal of doubts". It is made clear that non-levy, short-levy or erroneous refund prior to April 8, 2011 would be governed by section 28 "as it stood immediately before the date on which such assent is received".
>
> (iii) Section 28(11), as it presently stands, was not in the statute book prior to April 8, 2011. Therefore, no reference can be made to section 28(11) of the Act for determining not only the procedure but the very basis on which a non-levy, short-levy or erroneous refund occurring prior to April 8, 2011 should be dealt with.
>
> (iv) Prior to April 8, 2011 and even subsequent thereto, only a "proper officer" who has been "assigned" specific functions by the Central Board of Excise and Customs or the Commissioner as amended by section 2(34) of the Act could undertake the task of non-levy, short-levy or erroneous

refund. Therefore, for any non-levy, short-levy or erroneous refund prior to April 8, 2011, an officer of the customs who has not been specifically assigned such function in terms of the Act cannot exercise such power.

(v) Section 28(11), therefore, does not validate the show-cause notices issued by the Directorate of Revenue Intelligence, Directorate General of Central Excise Intelligence officers who are not "proper officers" for the purposes of section 2(34) of the Act if it amounted to undertaking any assessment or reassessment of a non-levy, short-levy or erroneous refund prior to April 8, 2011.

(vi) It is only for a period between April 8, 2011 and July 6, 2011 that such deemed "proper officer" can be said to have been given retrospective power to deal with non-levy, short-levy or erroneous refund for any period subsequent to April 8, 2011, i.e., the date on which section 28(11) read with Explanation 2 could be said to have come into force.

Section 28(11) gives untrammelled power

62. There is merit in the contention that section 28(11) is overbroad inasmuch as it confers jurisdiction on a plurality of officers on the same subject matter which would result in chaos, harassment, contrary and conflicting decisions. Such untrammelled power would indeed be arbitrary and violative of article 14 of the Constitution.

xxxx xxxx xxxx

Effect of section 28(11)

66. The mere fact that section 28(11) has been given retrospective effect does not solve the essential problem pointed out by the Supreme Court in Sayed Ali case [2011] 7 GSTR 338 (SC), which is the absence of the assigning of functions to "proper officers" under section 2(34) of the Act. The even more serious problem is the impossibility of reconciling two contradictory provisions, viz., Explanation 2 to section 28 and section 28(11) of the Act.

67. The words "this section" in the newly inserted sub-section (11) of section 28 obviously refers to section 28 as enacted with effect from April 8, 2011 and not section 28 which existed prior to that date. The effect of section 28(11) is to treat all officers of the customs to be "proper officers" only for the purposes of new section 28 of the Act and not the earlier section 28 of the Act. In particular, there is no validation of the show-cause notices issued prior to the amendment of section 28 of the Act. As observed in Delhi Cloth and General Mills Co. Ltd. v. State of Rajasthan (1962) 2 SCC 449 a legal consequence cannot be deemed nor, therefrom, can the events that should have preceded it. The past actions of the officers of the

Directorate of Revenue Intelligence and Directorate General of Central Excise Intelligence who are not designated as "proper officer" in issuing show- cause notices for the period prior to April 8, 2011 have not been validated.

68. There is also merit in the contention of the petitioners that section 28(11) confers validity only on "the proper officer". As explained in Consolidated Coffee Ltd. v. Coffee Board [1980] 46 STC 164 (SC), the use of article "the" as opposed to "an" or "any" is indeed significant. Only officers who have been assigned the functions of the "proper officer" for the purposes of section 17, i.e., assessment of the bills of entry can be considered as the proper officer for the purposes of section 28(11) of the Act. As further explained in Ishar Alloy Steels Ltd. v. Jayaswals Neco Ltd. [2001] 105 Comp Cas 1 (SC), the article "the" always denotes a particular thing or person.

69. The court also finds merit in the contention that if jurisdiction is exercised by one officer of the customs or of the Directorate of Revenue Intelligence or Directorate General of Central Excise Intelligence, it should impliedly oust the jurisdiction of other officers over the same subject matter. The doctrine of comity of jurisdiction requires that for the proper administration of justice there should not be an overlapping of the exercise of powers and functions. The decision of the Punjab and Haryana High Court in Kenapo Textiles P. Ltd. v. State of Haryana [1992] 84 STC 88 (P&H) and the decision of the Supreme Court in India Household and Healthcare Ltd. v. LG Household and Healthcare Ltd. [2007] 136 Comp Cas621 (SC) are relevant in this context.

Conclusion on effect and validity of section 28(11)

70. The net result of the above discussion is that the Department cannot seek to rely upon section 28(11) of the Act as authorising the officers of the customs, Directorate of Revenue Intelligence, Directorate General of Central Excise Intelligence, etc., to exercise powers in relation to non-levy, short-levy or erroneous refund for a period prior to April 8, 2011 if, in fact, there was no proper assigning of the functions of reassessment or assessment in favour of such officers who issued such show-cause notices since they were not "proper officers" for the purposes of section 2(34) of the Act and further because Explanation 2 to section 28 as presently enacted makes it explicit that such non-levy, short-levy or erroneous refund prior to April 8, 2011 would continue to be governed only by section 28 as it stood prior to that date and not the newly recast section 28 of the Act.

Section 28(11) interpreted in the above terms would not suffer the vice of unconstitutionality. Else, it would grant wide powers of assessment and enforcement to a wide range of officers,

not limited to customs officers, without any limits as to territorial and subject matter jurisdiction and in such event the provision would be vulnerable to being declared unconstitutional.

As regards the period subsequent to April 8, 2011, it is evident that if the administrative chaos as envisaged by the Supreme Court in Sayed Ali [2011] 7 GSTR 338 (SC) should not come about, there cannot be any duplicating and/or overlapping of jurisdiction of the officers. It would have to be ensured through proper co-ordination and administrative instructions issued by the Central Board of Excise and Customs that once a show-cause notice is issued specifying the adjudicating officer to whom it is answerable, then that adjudication officer, subject to such officer being a "proper officer" to whom the function of assessment has been assigned in terms of section 2(34) of the Act, will alone proceed to adjudicate the show-cause notice to the exclusion of all other officers who may have the power in relation to that subject matter.

The question as to the constitutional validity and effect of section 28(11) of the Act is answered accordingly."

The judgment rendered by our Court in *Mangali Impex* was subjected to challenge in Civil Appeal No. 6142/2019 before the Supreme Court and where in terms of an interim order dated 01 August 2016, the judgment was stayed.

26. More recently, the Supreme Court ruled on a review petition which had been filed by the Revenue and in terms whereof the correctness of the judgment in *Canon I* was urged to be reconsidered. That review petition ultimately came to be allowed in **Commr. of Customs vs. Canon India (P) Ltd.**[15] with the Supreme Court observing as follows:

"**F. <u>CONCLUSION</u>**

168. In view of the aforesaid discussion, we conclude that:

(i) DRI officers came to be appointed as the officers of customs *vide* Notification No. 19/90-Cus (N.T.) dated 26.04.1990 issued by the Department of Revenue, Ministry of Finance, Government of India. This notification later came to be superseded

[15] 2024 SCC OnLine SC 3188; Canon II

by Notification No. 17/2002 dated 07.03.2002 issued by the Department of Revenue, Ministry of Finance, Government of India, to account for administrative changes.

(ii) The petition seeking review of the decision in *Canon India* (supra) is allowed for the following reasons:

a. Circular No. 4/99-Cus dated 15.02.1999 issued by the Central Board of Excise & Customs, New Delhi which empowered the officers of DRI to issue show cause notices under Section 28 of the Act, 1962 as well as Notification No. 44/2011 dated 06.07.2011 which assigned the functions of the proper officer for the purposes of Sections 17 and 28 of the Act, 1962 respectively to the officers of DRI were not brought to the notice of this Court during the proceedings in *Canon India* (supra). In other words, the judgment in *Canon India* (supra) was rendered without looking into the circular and the notification referred to above thereby seriously affecting the correctness of the same.

b. The decision in *Canon India* (supra) failed to consider the statutory scheme of Sections 2(34) and 5 of the Act, 1962 respectively. As a result, the decision erroneously recorded the finding that since DRI officers were not entrusted with the functions of a proper officer for the purposes of Section 28 in accordance with Section 6, they did not possess the jurisdiction to issue show cause notices for the recovery of duty under Section 28 of the Act, 1962.

c. The reliance placed in *Canon India* (supra) on the decision in *Sayed Ali* (supra) is misplaced for two reasons - *first*, *Sayed Ali* (supra) dealt with the case of officers of customs (Preventive), who, on the date of the decision in *Sayed Ali* (supra) were not empowered to issue show cause notices under Section 28 of the Act, 1962 unlike the officers of DRI; and *secondly*, the decision in *Sayed Ali* (supra) took into consideration Section 17 of the Act, 1962 as it stood prior to its amendment by the Finance Act, 2011. However, the assessment orders, in respect of which the show cause notices under challenge in *Canon India* (supra) were issued, were passed under Section 17 of the Act, 1962 as amended by the Finance Act, 2011.

(iii) This Court in *Canon India* (supra) based its judgment on two grounds : (1) the show cause notices issued by the DRI officers were invalid for want of jurisdiction; and (2) the show cause notices were issued after the expiry of the prescribed limitation period. In the present judgment, we have only considered and reviewed the decision in *Canon India* (supra) to the extent that it pertains to the first ground, that is, the jurisdiction of the DRI officers to issue show

cause notices under Section 28. We clarify that the observations made by this Court in *Canon India* (supra) on the aspect of limitation have neither been considered nor reviewed by way of this decision. Thus, this decision will not disturb the findings of this Court in *Canon India* (supra) insofar as the issue of limitation is concerned.

(iv) The Delhi High Court in *Mangali Impex* (supra) observed that Section 28(11) could not be said to have cured the defect pointed out in *Sayed Ali* (supra) as the possibility of chaos and confusion would continue to subsist despite the introduction of the said section with retrospective effect. In view of this, the High Court declined to give retrospective operation to Section 28(11) for the period prior to 08.04.2011 by harmoniously construing it with Explanation 2 to Section 28 of the Act, 1962. We are of the considered view that the decision in *Mangali Impex* (supra) failed to take into account the policy being followed by the Customs department since 1999 which provides for the exclusion of jurisdiction of all other proper officers once a show cause notice by a particular proper officer is issued. It could be said that this policy provides a sufficient safeguard against the apprehension of the issuance of multiple show cause notices to the same assessee under Section 28 of the Act, 1962. Further, the High Court could not have applied the doctrine of harmonious construction to harmonise Section 28(11) with Explanation 2 because Section 28(11) and Explanation 2 operate in two distinct fields and no inherent contradiction can be said to exist between the two. Therefore, we set aside the decision in *Mangali Impex* (supra) and approve the view taken by the High Court of Bombay in the case of *Sunil Gupta* (supra).

(v) Section 97 of the Finance Act, 2022 which, *inter-alia*, retrospectively validated all show cause notices issued under Section 28 of the Act, 1962 cannot be said to be unconstitutional. It cannot be said that Section 97 fails to cure the defect pointed out in *Canon India* (supra) nor is it manifestly arbitrary, disproportionate and overbroad, for the reasons recorded in the foregoing parts of this judgment. We clarify that the findings in respect of the *vires* of the Finance Act, 2022 is confined only to the questions raised in the petition seeking review of the judgment in *Canon India* (supra). The challenge to the Finance Act, 2022 on grounds other than those dealt with herein, if any, are kept open.

(vi) Subject to the observations made in this judgment, the officers of Directorate of Revenue Intelligence, Commissionerates of Customs (Preventive), Directorate General of Central Excise Intelligence and Commissionerates of Central Excise and other similarly situated officers are proper officers for the purposes of Section 28 and are competent to issue show cause notice thereunder.

Therefore, any challenge made to the maintainability of such show cause notices issued by this particular class of officers, on the ground of want of jurisdiction for not being the proper officer, which remain pending before various forums, shall now be dealt with in the following manner:

a. Where the show cause notices issued under Section 28 of the Act, 1962 have been challenged before the High Courts directly by way of a writ petition, the respective High Court shall dispose of such writ petitions in accordance with the observations made in this judgment and restore such notices for adjudication by the proper officer under Section 28.

b. Where the writ petitions have been disposed of by the respective High Court and appeals have been preferred against such orders which are pending before this Court, they shall be disposed of in accordance with this decision and the show cause notices impugned therein shall be restored for adjudication by the proper officer under Section 28.

c. Where the orders-in-original passed by the adjudicating authority under Section 28 have been challenged before the High Courts on the ground of maintainability due to lack of jurisdiction of the proper officer to issue show cause notices, the respective High Court shall grant eight weeks' time to the respective assessee to prefer appropriate appeal before the Customs Excise and Service Tax Appellate Tribunal (CESTAT).

d. Where the writ petitions have been disposed of by the High Court and appeals have been preferred against them which are pending before this Court, they shall be disposed of in accordance with this decision and this Court shall grant eight weeks' time to the respective assessee to prefer appropriate appeals before the CESTAT.

e. Where the orders of CESTAT have been challenged before this Court or the respective High Court on the ground of maintainability due to lack of jurisdiction of the proper officer to issue show cause notices, this Court or the respective High Court shall dispose of such appeals or writ petitions in accordance with the ruling in this judgment and restore such notices to the CESTAT for hearing the matter on merits.

f. Where appeals against the orders-in-original involving issues pertaining to the jurisdiction of the proper officer to issue show cause notices under Section 28 are pending

> before the CESTAT, they shall now be decided in accordance with the observations made in this decision.
>
> **169.** In view of the aforesaid, we allow the Review Petition No. 400/2021 titled *Commissioner of Customs* v. *Canon India Pvt. Ltd.* and the connected Review Petition Nos. 401/2021, 402/2021 and 403/2021 insofar as the issue of jurisdiction of the proper officer to issue show cause notice under Section 28 is concerned. As discussed, the findings of this Court in *Canon India* (supra) in respect of the show cause notices having been issued beyond the limitation period remain undisturbed.
>
> **170.** We set aside the decision of the High Court of Delhi rendered in the case of *Mangali Impex* (supra) and uphold the view taken by the High Court of Bombay in the case of *Sunil Gupta* (supra). We also uphold the constitutional validity of Section 97 of the Finance Act, 2022."

27. It is the decision rendered in *Canon II* on 07 November 2024 which appears to have conclusively settled the dispute which had festered from the time when the Supreme Court had handed down its judgment in *Sayed Ali*. The confusion that prevailed with respect to the authority of the DRI or officers attached to the Preventive Division to undertake an adjudication owed its genesis to the judgment and thus started on 18 February 2011 when judgment came to be pronounced in *Sayed Ali* that was perpetuated by *Mangali Impex* on 03 May 2016 and continued by *Canon I* judgment whereon was pronounced on 09 March 2021. The confusion that had prevailed ultimately came to be dispelled and laid to rest when the review petition came to be allowed by the Supreme Court in *Canon II*.

28. From the details which have been provided by the respondents in these proceedings, it would appear that the Revenue had, for quite some time, been following the process of placing open and unresolved cases pertaining to adjudication in the call book. The placement of matters in the call book was in line with instructions issued by the Board from

time to time requiring adjudicating authorities to place pending adjudication proceedings in abeyance, some of which had been placed for our perusal. One of the earliest of those instructions to which our attention was drawn is dated 29 June 2016 and reads thus:

"**INSTRUCTION F.NO.276/104/2016-CX.8A (PT.)**

INCLUSION OF SHOW CAUSE NOTICES ISSUED IN RELATION TO SECTION 28(11) OF CUSTOMS ACT, 1962 ON COMPETENCY OF OFFICERS OF DGDRI, DGCEI AND CUSTOMS (PREV.), IN CALL BOOK

INSTRUCTION F.NO.276/104/2016-CX.8A (PT.), DATED 29-6-2016

The Hon'ble High Court of Delhi *vide* the order dated 3-5-2016 in the case of Mangali Impex Ltd. in WP No. 441/2013 and others held that sub-section (11) of section 28 of the Customs Act, 1962 cannot validate SCNs or proceedings pursuant thereto in relation to non-levy, short-levy or erroneous refund for the period prior to 8th April 2011, if such SCNs have been issued or proceedings conducted by officers of the Customs, DGDRI or DGCEI or as in the present case by the SIIB, who are not 'proper officers' within the meaning of sub-section (34) of section 2 of the Act.

2. In this regard it may be mentioned that the amendment in section 28 (11) of the Customs Act, 1962 was brought out by the Government, after the decision of Supreme Court in *Commissioner of Customs* v. *Sayed Ali* (2011) 3 SCC 537, wherein it was held that Customs Preventive Officers are not proper officers to issue Show Cause Notice u/s 28 of Customs Act, 1962. *Vide* Notification No.44/2011, dated 6-7-2011, Board assigned the functions of proper Officers to the officers of DGDRI, DGCEI and Preventive. Further, in the Statement of Facts and Reasons to the Customs (Amendment and Validation), Bill, 2011, while introducing sub-section 11 of section 28 of the customs Act,1962, the then FM had expressly mentioned that it has purposed to amend the Customs Act, 1962 retrospectively. Thus, the intention of Legislature was clearly spelt out. Therefore, the officers of DGDRI, DGCEI and Preventive are Proper Officers even for the Show Cause Notices issued prior to issuance of Notification dated 6-7-2011. Since the order dated 3-5-2016 of High Court of Delhi challenges the constitutional validity of sub-section (11) of section 28 of the Customs Act, 1962, the Board has decided to file an SLP in the case *i.e.* W.P. No. 441/2013 before the Hon'ble Supreme Court.

3. In view of the above, field formations are requested to transfer all the SCNs issued by DRI, DGCEI, SIIB, Preventive prior to 6-7-2011 and which are pending adjudication to the Call Book, till disposal of the matter in the Supreme Court.

4. Difficulties faced, if any, in implementation of this Circular may be brought to the notice of the Board."

29. By way of exemplar, we also extract an instruction dated 17 March 2021 as issued by the Board hereinbelow:

"Instruction No.04/20221-Customs

F. No.450/72/2021-Cus-IV
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
xxxxxx

Room No.227B, North Block, New Delhi
Dated the 17th of March, 2021.

To

Principal Additional Director General,
Directorate General of Intelligence (DRI),
New Delhi.

Sir,

Subject: Show Cause Notice (SCN) dated 19.03.2019 issued by DRI against Sh. Anil Aggarwal and 11 others – Directions to keep SCN pending –reg.

Reference is invited to the letters from your office drawing attention to the judgment dated 09.03.2021 of the Hon'ble Supreme Court in Civil Appeal No. 1827 of 2018 in the case of M/s Canon India Private Limited vs Commissioner of Customs. Vide the said judgement, the Hon'ble Apex Court has ruled that the Additional Director General (ADG) of Directorate of Revenue Intelligence (DRI) is not the proper officer to issue Show Cause Notice (SCN) under sub-section (4) of section 28 of the Customs Act, 1962. The Apex Court has concluded that the entire proceeding in the present case initiated by ADG (DRI) by issuing SCN, as invalid and without any authority of law. The Apex Court has accordingly set aside the subject SCN.

2. Further, attention is drawn to the specific reference for seeking Board's direction with respect to SCN dated 19.03.2019

against Sh. Anil Aggarwal and 11 others where the adjudication of the SCN would get barred by the limitation of time on 18th March, 2021 under sub-section (9) of section 28 of the Customs Act, 1962, on account of the inability to proceed further due to the said judgement of the Hon'ble Supreme Court.

3. The matter has been examined. The implications of the said judgement are under active examination in the Board. Therefore, the Board has decided that for the present and until further directions, the said SCN may be kept pending.

4. Further, all the fresh SCNs under Section 28 of the Customs Act, 1962 in respect of cases presently being investigated by DRI are required to be issued by jurisdictional Commissionerates from where imports have taken place.

5. Difficulties, if any, may please be brought to the notice of Board. Hindi version follows.

Yours faithfully,

(Ananth Rathakrishnan)
Deputy Secretary (Customs)"

IV. FACTUAL NARRATIVE

30. Having noticed the relevant statutory provisions, as well as the judgments rendered by Courts from time to time, we propose to now deal with the facts that individually obtain in some of the writ petitions forming part of this batch. For our assistance and in order to explain the cause behind the asserted inordinate delay, the respondents had placed on the record a detailed chart that sought to encapsulate the different stages of proceedings in respect of each of the writ petitioners commencing from the issuance of the original SCN, transfer to the call book and the passing of final orders in some of those cases. The consolidated chart is adopted and made part of this judgment as **Appendix-A**.

31. From the facts which can be gleaned from W.P.(C) 16163/2023, the following position emerges. The SCN in that matter came to be issued originally on 22 December 2006. According to the respondents, on 29 June 2016 the said proceedings were transferred to the call book on the basis of the instructions issued by the Board and which in turn was based on the judgment which had by then come to be pronounced in *Mangali Impex*. The SCN is thereafter stated to have been taken out from the call book on 03 January 2017 pursuant to the Board's Instructions which were issued on the same date. It thereafter came to be transferred back to the call book on 03 November 2017 pursuant to directives of the Board and retrieved therefrom on 03 May 2019. On 17 March 2021, the SCN was again transferred to the call book for a third time and taken out on 09 April 2022, pursuant to Section 97 of the **Finance Act, 2022**[16] coming into force. Additionally, according to the respondents, personal hearings were held on 17 April 2012, 13 October 2014, 02 December 2020 and 11 August 2023. According to them, the matter was inordinately delayed since the petitioner repeatedly requested for **Relied Upon Documents**[17] to be provided in the course of the personal hearings which were held.

32. However, and as is manifest from the record, although the SCN was originally issued on 22 December 2006 it came to be transferred to the call book for the first time only on 29 June 2016, the respondents have failed to proffer any explanation for this delay of almost 10 years even though no restraint operated upon the right of the authorities to finalize the adjudication during this period.

[16] 2022 Act
[17] RUD

33. Another case which emanates from the Customs Act is W.P.(C) 12425/2023 and where the SCN is dated 20 December 2012. In this case also the proceedings are yet to be concluded. As per the disclosures made by the respondents, in terms of an order of the Board dated 31 January 2013, the SCN proceedings were assigned to the Commissioner of Customs, ICD-Tughlakabad. Thereafter, the Additional Director General of the DRI was appointed as the Common Adjudicating Authority on 12 January 2016 and the proceedings were thus transferred from the Commissioner of Customs, ICD-Tughlakabad to the Additional Director General of the DRI on 14 June 2016. However, and as is evident from the details provided and encapsulated in Appendix A, all that has happened since then is the matter being initially transferred to the call book, retrieved therefrom subsequently, certain dates for personal hearing being fixed and yet the proceedings not being accorded closure.

34. This would be an appropriate juncture to also notice some of the cases where a final order of adjudication may have come to be passed under the Customs Act. One such matter is W.P.(C) 3705/2024 and where proceedings commenced pursuant to a SCN dated 25 February 2009. The final adjudication order has come to be framed on 23 January 2024. Hereto, the proceedings were initially placed in abeyance consequent to a transfer to the call book on 29 June 2016 from where it was retrieved on 03 January 2017 and inexplicably transferred back on 03 November 2017. It remained in the call book for a period of almost two years till it was taken out on 03 May 2019 and placed yet again in that book on 17 March 2021. Pursuant to the 2022 Act, it was finally taken out of the call book on 01 April 2022.

35. The cases of W.P.(C) Nos. 3737/2024, 3753/2024 and 3755/2024 wherein final adjudication orders have come to be passed follow an identical route. However, the respondents have abjectly failed to provide any explanation for the period between 2009 when the SCN was originally issued and 2016, when it was placed in the call book for the first time.

36. A stark example of a failure to conclude the adjudicatory process with expedition is represented by W.P.(C) 5896/2024. Proceedings in this case commenced pursuant to the issuance of a SCN on 23 December 2006 and saw the passing of a final order on 08 February 2024. According to the respondents, although approximately 80 dates of personal hearing are stated to have been fixed between 2008 to 2023, the noticees regularly sought adjournment on one pretext or another and failed to appear and participate in the hearings. However, we find that in this particular case, although the proceedings stood transferred to the call book on only one occasion, the respondents do not proffer any explanation as to why, and if they were of the opinion that the noticees were deliberately delaying the conclusion of proceedings, they did not proceed *ex parte*.

37. W.P.(C) 4831/2024 represents one of the cases in which the SCN was issued on 29 November 2019 and thus after amendments had come to be introduced in Section 28 by virtue of the 2018 Act. The proceedings in that case are still to see a conclusion. In fact, and as per the respondents, supplementary SCNs' came to be issued in that matter on 20 April 2020 and 18 September 2020. The adjudication proceedings were initially transferred to the call book on 01 April 2021 premised on

the instructions of the Board dated 17 March 2021 and which are sought to be sustained on the anvil of Section 28(9-A) (c) of the Customs Act. According to the respondents, the statement of an advocate connected with the investigation was recorded on 15 September 2020 and dates for personal hearing fixed on 07 April 2020, 29 July 2020 and 15 September 2020. The respondents additionally rely upon the order passed by the Supreme Court in **In Re: Cognizance For Extension Of Limitation**[18] and the exclusion of the period between 15 March 2020 to 15 March 2022 to explain their inaction.

38. The last of the cases emanating from the Customs Act which we propose to notice is that of W.P.(C) 15971/2023 and where proceedings were initiated pursuant to a SCN dated 23 December 2006. From the details provided by the respondents, certain dates for personal hearing appear to have been fixed in 2009, 2012, 2014, 2017, 2020 and lastly in 2023. In this matter too, directions were issued for the proceedings being transferred to the call book on 29 June 2016 and where it remained till it was transferred out on 03 January 2017. It, however, got transferred back to the call book on 03 November 2017 and remained there till it was extracted therefrom on 03 May 2019. Thereafter, it was transferred to the call book again on 17 March 2021 and called out on 31 March 2022. The respondents, however, in this matter too have failed to explain the delay between the issuance of the SCN and the first date when proceedings were transferred to the call book.

39. W.P.(C) 6146/2024 arises from the 1994 Act and in respect of which SCNs were issued on 20 April 2012 and 16 October 2012. Here a

[18] Suo Motu W.P.(C) 3/2020 dated 08 March 2021

final order has come to be passed on 28 March 2024. The personal hearing dates relevant to this case are stated to be 25 April 2018 and 24 January 2024. From the disclosures made by the respondents in connection with this case, we yet again find no explanation provided for the inaction during the period between 2012 and 2018. Yet another case emanating from the 1994 Act is W.P.(C) 6147/2024, where the SCN was issued on 26 October 2018 and the proceedings finalized in terms of an order passed on 28 March 2024. In this particular case, the proceedings were never transferred to the call book.

40. While noticing matters arising out of the 1994 Act, we also deem it apposite to take note of the facts as they obtain in W.P.(C) 6429/2024 wherein although the SCN was issued on 20 March 2020, a final order came to be passed only on 16 January 2024. Although the proceedings pertaining to this particular assessee were never placed in the call book, the respondents assert that delay was caused on account of the outbreak of the Covid-19 pandemic. They would additionally contend that Section 73(4B) of the 1994 Act is liable to be viewed as being directory since it adopts the expression "*where it is possible to do so*".

V. SUBMISSIONS OF PARTIES

41. Leading submissions on behalf of the writ petitioners, Mr. Gulati, learned senior counsel firstly drew our attention to the judgment rendered by the Division Bench of the Bombay High Court in **Parle International Ltd. vs. UOI**[19]. Here, the proceedings were originally commenced in terms of SCNs' issued in 2006 and whereafter proceedings went into a limbo. They were sought to be revived for the

[19] 2020 SCC OnLine Bom 8678

first time after almost 13 years. It was in the aforesaid backdrop that the High Court formulated the relevant issue to be whether a delayed adjudication could be sustained. While dealing with this aspect the Bombay High Court held as follows:

> "**19.** Way back in 1983, this court in Bhagwandas S. Tolani v. B. C. Aggarwal (1983) 12 ELT 44 (Bom) examined an adjudication proceeding which was started after 11 years of issue of show-cause notice. It was held that a stale matter could not be allowed to be reopened since to allow it to be reopened would cause serious detriment and prejudice to the petitioner. When the Department had contended that there was no limitation in commencing adjudication proceedings, this court held that if such contentions as to limitation were to be accepted, it would mean that the Department can commence adjudication proceedings 10 years, 15 years or 20 years after the original show-cause notice was issued, which could not be permitted. The position would have been different had there been any default on the part of the petitioner which contributed to the long delay. In such a case, petitioner would not be permitted to take advantage of his own wrong but that was not even the case of the Department.
>
> **20.** The above view of this court has been consistently followed in subsequent cases. In Sanghavi Reconditioners P. Ltd. v. Union of India [2018] 12 GSTL 290 (Bom), a Division Bench of this court examined a challenge to such delayed adjudication. In that case show-cause notice was issued on March 28, 2002 and after more than 15 years, notice of hearing was issued on September 7, 2017. On behalf of the respondents it was contended that the show-cause notice was kept dormant in a call book because of related litigation in the Supreme Court. Ultimately, after the litigation was over, the show-cause notice was retrieved from the call book and notice of personal hearing was issued. It was further contended that this was a procedural aspect and should not be a ground for setting aside adjudication proceedings. In the above backdrop this court held as follows :
>
> > "15. With the assistance of Mr. Raichandani and Mr. Jetly, we have perused the petition and the annexures thereto. We have also perused the consistent view taken by this court, based on which the judgment in the case of Lanvin Synthetics P. Ltd. (2015) 322 ELT 429 (Bom) was rendered. The obligation on the respondents to adjudicate the show-cause notices with expediency has been repeatedly emphasized. The decisions in the cases of Shirish Harshavadan Shah v. Deputy Director, E. D. (2010) 254

ELT 259 (Bom) and Cambata Indus. P. Ltd. v. Additional Dir. of Enforcement (2010) 254 ELT 269 (Bom) underline as to how show-cause notices issued decades back cannot be allowed to be adjudicated by the Revenue merely because there is no period of limitation prescribed in the statute to complete such proceedings. The adjudication proceedings serve a definite purpose. The object is to secure and recover public revenue. The larger public interest therefore requires that the Revenue and its officials adjudicate the show-cause notices expeditiously and within a reasonable time. The term "reasonable time" is flexible enough and would depend upon the facts and circumstances of each case. There is no rigidity or inflexibility, in the sense, a time is prescribed in the judgments of this court and that is termed as reasonable. Thus, what would be a reasonable time depends upon the facts and circumstances of each case. Surely, a period of 13 years as was found in the case of Shirish Harshavadan Shah (supra) and equally long period in the case of Cambata Indus. P. Ltd. (supra) was not termed as reasonable. This court, relying upon the judgment of the hon'ble Supreme Court in the case of Government of India v. Citedal Fine Pharmaceuticals reported in AIR 1989 SC 1771, held that in absence of any period of limitation, it is settled law that every authority should exercise the power within a reasonable period. What would be the reasonable period would depend upon the facts of each case and no hard and fast rule can be laid down in this behalf.

In the case of Lanvin Synthetics P. Ltd. (2015) 322 ELT 429 (Bom) as well, the period of 17 long years was found to be entirely unreasonable.Concededly in the present case, the show-cause notice was issued on March 28, 2002. The petitioners forwarded their reply to the show-cause notice after receipt thereof on September 14, 2002. Concededly, there was a hearing in the year, 2004.

17. The first affidavit-in-reply filed in this petition by the Assistant Commissioner of Customs does not dispute this factual position at all. All that it tries to impress upon the Court is the seriousness of the allegations and prays for an opportunity to adjudicate the issue even now. The affidavit emphasizes that the petitioner has voluntarily deposited a sum of Rs. 3,33,37,598.92. That was duty liability calculated in the year 1999 and much before the issuance of the show- cause notice. It may be that the amount was not received in full and final settlement of the Department's demand. However, there was an equal obligation, once the

show-cause notice was issued on March 28, 2002, to have adjudicated it expeditiously. The reasons assigned from paragraph 14 onwards would indicate that there were personal hearings in relation to all the notices.There may be voluminous records and there may be number of persons who have allegedly violated the provisions of law.However, the affidavit proceeds to state that there was a personal hearing held on March 25, 2004. A written brief was submitted by the petitioners and they relied upon the order of the Customs, Excise and Service Tax Appellate Tribunal in the case of A. S. Moloobhoy and Sons (supra). However, the Revenue found that there were adjournments sought but in the meanwhile, the Department/Revenue challenged the judgment of the Customs, Excise and Service Tax Appellate Tribunal in the case of A. S. Moloobhoy and Sons (2003) 162 ELT 196 (Bom) in the Supreme Court of India. Thereupon, all the matters were sent in the dormant list/call book. It may be a procedural aspect for the Department/Revenue. Unless and until the Revenue establishes that there is a law mandating taking cognizance of these procedural requirements or these procedural requirements have been engrafted into the applicable legislation so as to enable the Revenue/Department to seek extension of time, in writ jurisdiction, we are not obliged to take notice of these procedural delays at the end of the Revenue/Department. Accepting that case would defeat the rule of law itself. That would also result into taking cognizance of extraneous matters and basing our conclusion thereupon would then mean violating the principles laid down in the binding judgments of this court and the hon'ble Supreme Court. That the matters of present nature have to be concluded expeditiously and within a reasonable time. We do not therefore find the explanation from paragraphs 14 to 18 of this affidavit to be enough for granting the Revenue an opportunity to now adjudicate the subject show-cause notice. We have not found from any of these averments and statements in the affidavit that there was a bar or embargo, much less in law for adjudicating the show-cause notice. This court indulged the Revenue enough and by giving them an opportunity to file an additional affidavit. The additional affidavit as well, does not indicate as to why the Revenue took all these years, and after conclusion of the personal hearing in the year 2004, to pass the final order. Now allowing the Revenue to pass orders on the subject show- cause notice would mean we ignore the principle of law referred above. Secondly, we also omit totally from our consideration the complaint of the petitioner that in a matter

as old as of 1999, if now the adjudication has to be held, it will be impossible for them to trace out all the records and equally, contact those officials who may not be in their service any longer. Thus, they would have no opportunity, much less reasonable and fair, to defend the proceedings. That is equally a balancing factor in the facts and circumstances of the present case.

18. In the light of the above discussion, we are of the firm opinion that in so far as the petitioner before us is concerned, the Revenue/ Department has not been able to justify its lapse in not adjudicating the show-cause notice issued on March 28, 2002 for more than 15 years. There may be reasons enough for the Revenue to retain some matters like this in the call book, but those reasons do not find any support in law in so far as the present petitioner's case is concerned. Merely because there are number of such cases in the call book does not mean that we should not grant any relief to the petitioner before us."

21. Firstly, this court held that a show-cause notice issued a decade back should not be allowed to be adjudicated upon by the Revenue merely because there is no period of limitation prescribed in the statute to complete such proceedings. Larger public interest requires that the Revenue should adjudicate the show-cause notice expeditiously and within a reasonable period. What would be the reasonable period would depend upon the facts and circumstances of each case but certainly a period of 13 years cannot be termed as a reasonable period. Secondly, regarding keeping the show-cause notice in the dormant list or the call book, this court held that such a plea cannot be allowed or condoned by the writ court to justify inordinate delay at the hands of the Revenue. To accept such a contention would defeat the rule of law itself. Taking cognizance of such an aspect would amount to giving credence to extraneous matters. In any case such a procedure internally adopted by the respondents is not binding on the court.

22. This position has been reiterated by this court in Raymond Ltd. v. Union of India (2019) 368 ELT 481 (Bom). That was a case where show-cause notices were issued during the period 2001 to 2004. Adjudication proceedings were sought to be commenced after 14 to 17 years. Again the show- cause notices were kept in dormant list/call book, awaiting final decision in Central Excise receipts audit (CERA) audit objection. This court after referring to various judicial pronouncements took the view that the weight of judicial pronouncements leaned in favour of quashing the proceedings, if there had been an undue delay in deciding the same. In the absence of any period of limitation it is incumbent upon every authority to

exercise the power of adjudication post issuance of show-cause notice within a reasonable period. This court referred to the earlier decision in Sanghavi Reconditioners P. Ltd. (supra) and held that when the Revenue keeps the show-cause notice in call book then it should inform the parties about the same. It serves two purposes—(1) it puts the party to notice that the show- cause notice is still alive and is only kept in abeyance. This would enable the party concerned to safeguard the evidence till the show-cause notice is taken up for adjudication ; and (2) if the notices are kept in call book, the parties gets an opportunity to point out to the Revenue that the reasons for keeping it in call book are not correct and that the notices should be adjudicated promptly. Thus, informing the parties about keeping the show- cause notice in call book would advance the cause of transparency in revenue administration. It was held as under :

> "9. In the present facts, it is the case of the petitioner that because of long delay, papers and proceedings relevant to meet the show- cause notice are not available. Thus, seriously hampering the petitioners to appropriately meet the show-cause notice. This delay in taking up the adjudication of the show-cause notice (in the absence of any fault on the part of the party complaining) is a facet of breach of principles of natural justice. It impinges on procedural fairness, in the absence of the party being put to notice that the show-cause
>
> notices will be taken up for consideration, after some event and/or time, when it is not heard in a reasonable time. In the absence of the above, particularly as in this case, long delay has resulted in papers being misplaced. The reasonable period may vary for case to case. However, when the notices are being kept in abeyance (by keeping them in the call book as in this case), the Revenue should keep the parties informed of the same. This serves twofold purposes-one it puts the party to notice that the show-cause notice is still alive and is only kept in abeyance. Therefore, the party can then safeguard its evidence, till the show-cause notice is taken up for adjudication. Secondly, if the notices are being kept in the call book for some reason, the party gets an opportunity to point to the Revenue that the reasons for keeping it in call book are not correct and the notices could be adjudicated upon immediately. This is the transparent manner in which the State administration must function.
>
> 10. In fact, we note that the above manner of functioning is the objective of the State administration, as our attention has been drawn to the C. B. E. and C. Circular No. 1053/2017-CX., dated March 10, 2017*. In paragraph 9.4 of the above

> circular of the C. B. E. and C. has directed the officers of the Department to formally communicate to the party that the notices which have been issued to them, are being transferred to the call book. This would be expected of the State even in the absence of the above circular ; the circular only states the obvious. In this case, the show-cause notices were kept in the call book not at the instance of petitioner, but by the Revenue of its own accord. After having kept it in the call book, no intimation/communication was sent by the Commissioner pointing out that the show- cause notices had been kept in the call book. Thus, bringing it to the notice of the petitioners that the show-cause notices are still alive and would be subject to adjudication after the show-cause notices are retrieved from the call book on the dispute which led to keeping it in the call book being resolved. This, admittedly has not been done by the Revenue in this case.""

42. The Bombay High Court after noticing the various judgments which had explained and laid emphasis upon adjudication proceedings being liable to be concluded within a reasonable period, observed that undue delay would be sufficient to annul the entire adjudication itself. Since the respondents there had failed to provide any explanation for the adjudication proceedings having remained pending for almost 13 years and the delay not being attributable to any action of the writ petitioner, the Court ultimately held as follows:

> "**23.** In the present case, it is evident that the delay in adjudication of the show-cause notices could not be attributed to the petitioner. The delay occurred at the hands of the respondents. For the reasons mentioned, respondents have kept the show-cause notices in the call book but without informing the petitioner. Upon thorough consideration of the matter, we are of the view that such delayed adjudication of more than a decade defeats the very purpose of issuing show-cause notice. When a show-cause notice is issued to a party, it is expected that the same would be taken to its logical consequence within a reasonable period so that a finality is reached. A period of 13 years as in the present case certainly cannot be construed to be a reasonable period. The petitioner cannot be faulted for taking the view that respondents had decided not to proceed with the show-cause notices. An assessee or a dealer or a taxable person

> must know where it stands after issuance of show-cause notice and submission of reply. If for more than 10 years thereafter there is no response from the Departmental authorities, it cannot be faulted for taking the view that its reply had been accepted and the authorities have given a quietus to the matter. As has been rightly held by this court in Raymond Limited (supra), such delayed adjudication wholly attributable to the Revenue would be in contravention of procedural fairness and thus violative of the principles of natural justice. An action which is unfair and in violation of the principles of natural justice cannot be sustained. Sudden resurrection of the show-cause notices after 13 years, therefore, cannot be justified.
>
> **24.** There is one more aspect which we would like to point out. The respondents had not taken any action pursuant to the show-cause notices for long 13 years till issuance of notice for personal hearing on August 13, 2019. After the petitioner approached this court by filing the present writ petition on September 6, 2019 with due intimation to the respondents, respondent No. 3 went ahead and passed the order-in-original dated November 11, 2019. We fail to understand when the respondents could wait for 13 long years after issuance of the show-cause notices, there could not have been any earthly reason to proceed at such great speed and pass the order-in-original before the court could adjudicate on the correctness of the action of the respondents. Is it open to the respondents to materially alter the subject matter of the writ petition pending before the court and then contend that because of such material alteration, the writ petition has become infructuous and that the petitioner should avail the alternative remedy of appeal ?"

43. In **Nanu Ram Goyal vs. CCE (GST)**[20], a Division Bench of our Court was called upon to examine an identical challenge. The case pertained to proceedings initiated under the 1994 Act and was thus rendered in the backdrop of Section 73(4B) and which undisputedly obliges the competent authority to complete the determination process within one year from the date of issuance of notice, "*where it is possible to do so*". Notwithstanding the permissive interpretation that was canvassed on behalf of the respondents in light of the statutory provision adopting the aforenoted phraseology, our Court held that even where the statute fails to provide or stipulate a particular period, it

[20] 2023 SCC OnLine Del 2188; Nanu Ram Goyal I

would be the principles of reasonable time which would apply. This becomes evident from a reading of the following passages of that decision:

> "**19.** It is settled law that where there is no period stipulated for exercising jurisdiction, the same must be done within a reasonable period. In *Union of India* v. *Citedal Fine Pharmaceuticals* [*Union of India* v. *Citedal Fine Pharmaceuticals*, (1989) 3 SCC 483 : 1989 SCC (Tax) 464] , the Supreme Court had observed as under: (SCC p. 487, para 6)
>
> > "*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 assessee 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 or 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."
>
> **20.** In a later decision in *State of Punjab* v. *Bhatinda District Coop. Milk Producers Union Ltd.* [*State of Punjab* v. *Bhatinda District Coop. Milk Producers Union Ltd.*, (2007) 11 SCC 363] , the Supreme Court had reiterated the aforesaid principle in the following words: (SCC p. 367, para 18)
>
> > "*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. The learned counsel for the respondents did not controvert the aforesaid principle; he contended that the question as to what is a reasonable period is required to be ascertained with reference to the facts in a given case. And, in the present case, the reasonable period was required to be determined considering the "call book" procedure. Respondent 1 had resumed the proceedings immediately after finding that the matter was no longer required to be kept in abeyance (in th, "call book")."

44. The aspect of matters being placed in the call book also appears to have arisen for notice of the Court. While dealing with the procedure as adopted by the respondents of placing matters repeatedly in the call book, the Court in *Nanu Ram Goyal I* observed as follows:

> "**22.** The respondents state that Respondent 1 had placed the matter in th, "call book" in terms of the CBEC Circular dated 26-5-2003 (Circular No. 719-35-2003-CX). The aforementioned circular indicates that it had reiterated the instructions issued in the earlier Circular No. 53 of 1990-CX, dated 6-9-1990 and Circular No. 162-73-1995-CX, dated 14-12-1995; furthermore, directing that the Chief Commissioner should monitor the progress of disposal of the "call book" cases to ascertain whether the "call book" cases have been reviewed by the Commissioner of Central Excise; whether any appreciable progress has been noticed; and there are any avoidable delays.
>
> **23.** CBEC had issued Circular No. 53 of 1990-CX, dated 6-9-1990 stating that "if a current case has reached a stage where no action can or need be taken to expedite its disposal for at least 6 months (e.g. cases held up in law courts), it may be transferred to the call book with the approval of the competent authority". The Circular No. 162-73-1995-CX, dated 14-12-1995, also noted that the Commissioner of Customs and Central Excise, Delhi had requested for inclusion of certain other categories of cases that could be placed under the said "call book", namely, "(*i*) Cases in which the Department has gone in appeal to the appropriate authority; (*ii*) Cases where injunction has

been issued by the Supreme Court/High Court/CEGAT, etc; (*iii*) Cases where audit objections are contested; and (*iv*) Cases where the Board has specifically ordered the same to be kept pending and to be entered into the call book".

24. According to the respondents, the procedure of placing a case in the "call book" is well accepted. In the present case, Respondent 1 had done so, as the issue involved in the impugned show-cause notice was pending consideration before the Supreme Court in *CCE & Service Tax* v. *Sobha Developers Ltd.* [*CCE & Service Tax* v. *Sobha Developers Ltd.* Civil Appeal Nos. 9819-9820 of 2010, decided on 17-1-2017] , which was decided on 17-1-2017.

25. The question whether the procedure of placing matters in the "call book" is permissible is a contentious one. The Gujarat High Court in *Siddhi Vinayak Syntex (P) Ltd.* v. *Union of India* [*Siddhi Vinayak Syntex (P) Ltd.* v. *Union of India*, 2017 SCC OnLine Guj 2609] had observed as under: (SCC OnLine Guj para 35)

> "*35.* … In the opinion of this Court, instructions to consign a case to the call book are relatable to the adjudicatory process, and do not provide for any incidental or supplemental matters, consistent with the Act or the rules. Neither the Act nor the Rules, in any manner empower the CBE and C to issue instructions to any adjudicatory authority in relation to matters pending for adjudication before it."

26. The Gujarat High Court further observed that the concept of th, "call book" neither relates to uniformity in the classification of excisable goods nor to the levy of duties of excise on such goods, which were matters in respect of which the CBEC was empowered to issue circulars under Section 37-B of the Excise Act, 1944. Thus, the concept of the "call book" could not be traced to Section 37-B of the Excise Act, 1944 or any other provisions of the said Act. The Gujarat High Court reiterated the aforesaid view in *Shree Shakambari Silk Mills* v. *Union of India* [*Shree Shakambari Silk Mills* v. *Union of India*, 2017 SCC OnLine Guj 2496] .

27. This court is informed that the question as to the validity of the "call book" procedure is pending consideration before the Supreme Court in a batch of matters. It is stated that the Revenue had preferred an appeal against the decision of the Gujarat High Court in *Siddhi Vinayak Syntex (P) Ltd. case* [*Siddhi Vinayak Syntex (P) Ltd.* v. *Union of India*, 2017 SCC OnLine Guj 2609] , however, the said appeal was disposed of by an order dated 18-2-2022 in *Union of India* v. *Siddhi Vinayak Syntex (P) Ltd.* [*Union of India* v. *Siddhi Vinayak Syntex (P) Ltd.*, 2022 SCC OnLine SC 1818] on account of the low tax effect albeit with a clarification that if the assessee chose to raise any grounds regarding the "call book" regime, the assessee

would have to await the outcome of the proceedings pending in the Supreme Court."

45. The Court, ultimately and on facts, while desisting from rendering any opinion on the validity of the procedure of placing matters in the call book, held that in light of the gross delay, the order of adjudication would not sustain. It thus proceeded to hold as follows:

"**36.** In *ATA Freight Line (I) (P) Ltd.* v. *Union of India* [*ATA Freight Line (I) (P) Ltd.* v. *Union of India*, (2023) 25 GSTR-OL 181 : 2022 SCC OnLine Bom 648] , the Bombay High Court in somewhat similar circumstances where the show-cause notice had been kept in abeyance for more than seven to eleven years allowed the petition. The Bombay High Court also noticed that if the petitioner was informed about the show-cause notice being kept in the "call book", the petitioner would have applied for an appropriate relief by filing for appropriate proceedings. It was not expected for the assessee to preserve evidence and records for a long period of time. It is material to note that the Revenue had filed a special leave petition in *Union of India* v. *ATA Freight Line (I) (P) Ltd.* [*Union of India* v. *ATA Freight Line (I) (P) Ltd.* SLP(C) No. 003240 of 2023, dt. 10-2-2023] before the Supreme Court, which was dismissed by an order dated 10-2-2023. The said order reads as under:

"Delay condoned.

Having heard learned counsel for the parties at length, we do not find any good ground to interfere with the impugned judgment and order passed by the High Court. Accordingly, the special leave petition is dismissed.

Pending application(s), if any, stand disposed of."

37. It is apparent from the above that the Supreme Court had considered the matter but had found no grounds to interfere with the judgment of the Bombay High Court.

38. In view of the above, we conclude that the proceedings pursuant to the impugned show-cause notice are inordinately delayed and it is now impermissible for the respondents to continue the same. The respondents are, accordingly, interdicted from taking any action or continuing any proceedings pursuant to the impugned show-cause notice."

46. A review petition in **Nanu Ram Goyal vs. CCE (GST) & Ors.**[21] which came to be filed by the respondents also came to be dismissed. We deem it appropriate to extract the order passed on the aforenoted review petition since the order of the Supreme Court in **Commissioner, GST And Central Excise Commissionerate II, & Ors. vs. M/s Swati Menthol and Allied Chemicals Ltd & Anr.**[22], and which was pressed into aid before us in these proceedings, appears to have been cited for the consideration of the Court. The Court, however, pertinently observed that *Swati Menthol* turned on its own peculiar facts and thus would not detract from the correctness of the view which had been expressed in the original judgment. The review petition came to be dismissed in the following terms:

> "1. Respondent no.1/ review petitioner (hereafter Revenue) has filed the present review petition seeking review of the judgment dated 18.04.2023 passed by this Court.
>
> 2. Mr. R. Ramachandran, learned counsel appearing for the Revenue has referred to the decision of the Supreme Court in ***Commissioner, GST and Central Excise Commissionerate II & Ors. v. M/s Swati Menthol & Allied Chemicals Ltd. & Anr., SLP(C) No. 20072 of 2021 dated 10 July, 2023***, wherein the Supreme Court had accepted the Revenue's contention that the matters be remitted to the Adjudicating Authority (Commissioner of GST) to conclude the proceedings within a period of eight weeks.
>
> 3. Ms. Kavita Jha, learned counsel appearing for the petitioner submits that the order in ***Commissioner, GST and Central Excise Commissionerate II & Ors. v. M/s Swati Menthol & Allied Chemicals Ltd. & Anr.*** (supra) was passed in the given facts of that case. She submits that in that case, the Court had noted the submission that, the assessee had despite notices not appeared before the concerned officer, which is not so in the present case. She further submits that the Supreme Court has not decided the question as considered by this Court in the judgment under review and had issued directions in the facts of that case keeping all contentions of

[21] Review Petition No. 330/2023 dated 16 February 2024; Nanu Ram Goyal II
[22] SLP (C) No. 20072/2021 dated 10 July 2023

the parties open. She also points out that this Court had in its order dated 18.04.2023 also considered the decision of the Bombay High Court in ***ATA Freight Line (I) Pvt. Ltd. v. Union of India & Ors.:2022 SCC OnLine Bom 648*** and a Special Leave Petition against the said decision was dismissed by the Supreme Court.

4. The order dated 10.02.2023 passed by the Supreme Court in Special Leave Petition (Civil) Diary No.828/2023 captioned ***Union of India & Ors. v. ATA Freight Line (I) Pvt. Ltd.*** indicates that prior to the dismissal of the Special Leave Petition, the Court had heard the counsels for the parties at length and found that there was no ground to interfere with the said decision.

5. The decision rendered by the Hon'ble Supreme Court in ***Commissioner, GST and Central Excise Commissionerate II & Ors. v. M/s Swati Menthol & Allied Chemicals Ltd. & Anr.*** (supra) was rendered in the facts of that case as the court considered it apposite to relegate the matter to the Adjudicating Authority.

6. We find no ground to review the judgment under review. Moreover, it is also seen that the present review petition has been filed after 154 days delay. The learned counsel for the revenue states that the due process for approval / permission for filing the review petition, from the hierarchy of the departmental authorities was followed and the same resulted in the aforesaid delay. It is contended that the delay in filing the present review petition is on account of the administrative reasons. We are unable to accept that the Revenue was prevented by sufficient cause from filing the present review petition within the stipulated period.

7. In view of the above, the review petition is dismissed both on the grounds of delay and on merits."

47. A detailed decision with respect to the imperatives of adjudication being concluded with due expedition and the validity of the call book procedure arose for consideration of the High Court of Jharkhand in **Tata Steel Limited vs. Union of India & Ors.**[23] The Jharkhand High Court too was dealing with a batch of writ petitions which had questioned the continuance of adjudication proceedings decades after the original SCNs' had been issued. It appears that the

[23] W.P.(T) 826/2023 dated 13 June 2023

validity of placement of matters in the call book was considered in extenso in another writ petition and the order passed thereon having been duly considered by the Division Bench in *Tata Steel*. This becomes evident from a reading of paragraph 13 of the judgment, and which is extracted hereinbelow:

> "**13.** Having heard learned counsel for the parties and after going through the documents available on record and the averments made in the respective affidavits and also the order passed by this Court in W.P.(T) No.308 of 2023, it appears that the issue involved in these cases is squarely covered. For brevity relevant portion of the judgment passed in W.P.(T) No.308 of 2023 is quoted hereinbelow:-
>
> > *"17. We have given anxious consideration to the submission of learned counsel for the parties, taken note of the relevant material facts pleaded and borne from the records and also the CBIC circulars cited by the parties and the decisions relied upon by learned counsel for the petitioner.*
> >
> > *18. The facts as borne out from the pleadings on record need no repetition. The impugned show cause is of 9 th December 1993 (Annexure-5) issued upon the petitioner asking them to show cause as to why the appropriate excise duty amounting to Rs. 1,67,42,847.30 be not imposed upon him under the provisions of Rules 9(B), 52A, 173(B), 173(F) and 173(G) of Central Excise Rules, 1944 and Section 11A of the CEA, 1944 alleging less payment of duty due to misclassification. The respondents had kept the impugned show cause notice and ten other SCNs as indicated in the chart above in the call book on the ground that the matter was subjudice. However, from the pleadings on record and also from the averments made in the counter affidavit, it appears that none of the conditions as enumerated in the CBIC circular / guidelines relied upon by the respondents and also by the petitioner stood satisfied for transferring the matter to the call book. It is not a case where the department had gone in appeal before the learned CEGAT or before the Apex Court, rather it was the petitioner who twice went up to the Apex Court in Civil Appeal No. 782 of 1987 against the first SCN dated 8 th February 1984 and in Civil Appeal No. 3973 of 2001 against the SCN dated 13th August 1990. The instant SCN pertains to the period June 1993 to November 1993 and is of 9th December 1993. Learned counsel for the 11 respondents has fallen back on Clause 2 of the condition stipulated in the CBIC circular as*

referred to in para 11 of their counter affidavit but he has not been able to show that at any point of time there was a stay in proceeding upon the impugned show cause notice by either the CEGAT or the High Court or the Hon'ble Apex Court. Even if by stretching the argument to the extent that the show cause notice dated 13th August 1990 was subjudice before the Apex Court in Civil Appeal No. 3973 of 2001, there is no basis or explanation on the part of the respondents to have kept the show cause notice in its call book without proceeding for its adjudication after the judgment rendered in that case by the Apex Court on 5th May 2004. None of the other two conditions as indicated by the respondents at Clause 3 and 4 quoted above also stand satisfied in the present case. The respondents have not enclosed any document to show that prior approval of the Collector of excise was taken before keeping the case in the call book. There seems to be no reference of any periodic review of the call book, though the relevant CBIC circulars such as the circular dated 30th March 1998 and 20th May 2003 specifically required the Commissioners to review the cases transferred to call books on a monthly basis in circumstances where the department was confronted with a situation where provisional assessment cases were kept pending for several years. The extract of the relevant circulars are quoted here under :-

In circular dated 30th March 1998 :

> *"While the Board had issued instructions to Commissioners to review the cases transferred to call books on a monthly basis, it is observed that no such review is actually being done. (Board's DO Letter F.No.101/2/92-CX.3, dated 4th March 1992 and Board's Circular No.53/90-CX.3, dated 6.9.1990). 2. The Board vide its < > specified the following categories of cases which can be transferred to call book viz.:*
>
> *1. Cases in which the Department has gone in appeal to the appropriate authority.*
>
> *2. Cases where injection has been issued by Supreme Court/High Court/CEGAT, etc.*
>
> *3. Cases where audit objections are contested. 4. Cases where the Board has specifically ordered the same to be kept pending and to be entered into the call book."*

In circular dated 28th May 2003 :

"3. It is further directed that a one-time comprehensive review of all the pending call book cases will be done by respective CCEs. The Chief Commissioner may monitor such review periodically in their respective zones. The progress report of the call book cases should continue to mention in the MTR as well as in the monthly statements of the progress achieved in "Key Result Areas".

In circular dated 10th March 2017 :

"9.4 Intimation of Call Book cases to notice: A formal communication should be issued to the notice, where the case has been transferred to the call book."

19. In this regard, it is pertinent to refer to the provisions of Section 11A of the CEA which reads as under :-

SECTION 11A OF THE CENTRAL EXCISE ACT, 1944 "SECTION 11A- Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. – (1) Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, for any reason, other than the reason of fraud or collusion or any willful misstatement or suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty,-

xxx xxx xxx

(4) Where any duty of excise has not been levied or paid or has been short-levied or short- paid or erroneously refunded by reason of –

(a) fraud; or

(b) collusion; or

(c) wilful mis-statement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty. by any person chargeable with the duty, the Central Excise Officer shall, within five years from the relevant date, serve notice on such person requiring him to show cause why he should not pay the amount specified in the notice along with

interest payable thereon under section 11AA and a penalty equivalent to the duty specified in the notice.

(5) Where, during the course of any audit, investigation or verification, it is found that any duty [has not been levied or paid or has been] short - levied or short - paid or erroneously refunded for the reason mentioned in clause (a) or clause (b) or clause (c) or clause (d) or clause (e) of sub-clause (4) but the details relating to the transactions are available in the specified records, then in such cases, the Central Excise Officer shall within a period of five years from the relevant date, serve a notice on the person chargeable with the duty requiring him to show cause why he should not pay the amount specified in the notice along with interest under section 11AA and penalty equivalent to fifty per cent of such duty.

xxx xxx xxx

(11) The Central Excise Officer shall determine the amount of duty of excise under sub-section (10) –

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

(b) within two year [substituted for one year w.e.f. 14-05-2016] from the date of notice, where it is possible to do so, in respect of cases falling under the proviso to sub-section (4) or subsection (5)].

xxx xxx xxx

20. The issue at hand has crossed the attention of the various jurisdictional High Courts such as the Bombay High Court and the Punjab and Haryana High Court of which the judgments rendered in the cases of Eastern Agencies Aromatics Private Limited Vs. Union of India & Ors,. para-14 to 17 and Harkaran Dass Vedpal Vs. Union of India, para-3, 9 and 11 to 15 have been specifically relied upon by the petitioner.

21. Petitioner has also relied upon the recent judgment of the Apex Court, in Special Leave to Appeal (Civil) No. 12376 of 2022 dated 29th July 2022 arising out from a judgment of Punjab and Haryana High Court wherein the show cause notice remain unadjudicated for 11 years. In the peculiar facts and circumstances of the case the Apex Court refused to interfere in the matter and the special leave

petition was dismissed. The decision in the case of Eastern Agencies Aromatics Private Limited (Supra) relates to the delay of nine years in adjudication of a show cause notice under Section 28 of the Customs Act, 1962 which also contains a similar provision "if it is possible to do so". The opinion of the learned Bombay High Court at para 14 to 17 are quoted hereunder for easy reference:

> *14. Perusal of the show cause notice shows that the breach alleged for initiating action for demanding the forgone import duty was on the ground of irregular exports by the exporters and breach of the provisions committed by the exporters. It is not in dispute that the Petitioner had promptly replied the show cause notice well within time in the year 2014 itself. It is further not in dispute that the Petitioner was never intimated in respect of any adjudication of the show cause notice and/or any decision of keeping the adjudication pending. Thus, the Petitioner is justified in submitting that the Petitioner was under bonafide belief that the Respondents were not interested in adjudicating the show cause notice and that the same was dropped. Though the Respondent Nos. 1 and 2 have sought to justify their action to revive the show cause notice after a period of 9 years, the contentions raised by the Respondent Nos. 1 and 2 are unreasonable and not supported by any statutory provisions. 15. We have perused the consistent view taken by this Court, that the concerned Authority is under an obligation to adjudicate upon the show cause with expediency. In our view, unreasonable and unjustified delay in adjudication of the show cause notice is in contravention of procedural fairness and is violative of principles of natural justice.*
>
> *16. We find sufficient merit in the submissions made on behalf of the Petitioner that delay in adjudication of the show cause notice constitutes breach of principle of natural justice. In the present case, show cause notice issued in the year 2013 was replied by the Petitioner well within time in the year 2014 itself. The Petitioner 14 has specifically pleaded that the previous Director of the Petitioner, who was looking after the day to day management including the import of goods expired on 19th May 2019 and that no other person was aware about the proceedings of the show cause notice. There is no*

dispute that the Petitioner was never intimated with respect to adjudication on the show cause notice or the same being kept in the call book. Learned counsel for the Petitioner is right in contending that the Petitioner is gravely prejudiced as the Respondents never informed the Petitioner about the show cause notice being kept in the call book and that due to passage of time the relevant papers may not be available and it will not be possible to defend the show cause notice. Petitioner is also right in contending that even otherwise pendency of proceedings was not in respect of the Petitioner. Hence it is obvious that revival of show cause notice will seriously prejudice the Petitioner.

17. In the present case, reasons given by the Respondents for the delay caused in seeking to revive the show cause notice do not constitute any reasonable ground and the delay caused is not sustainable, as the same is in breach of the principles of natural justice. Though in Affidavit-In-Reply it is sought to be contented that the period of limitation prescribed by the amending Act, 2018 is not applicable to the present show cause notice of the year 2013, nothing was argued before us in support of this contention. In our view, even otherwise the powers of such nature of adjudicating the show cause notice are required to be exercised within reasonable time. We do not find any justification for the inaction on the part of the Respondents for keeping the adjudication of the show cause notice pending and for seeking revival of the same after a period of 9 years. For the reasons recorded above, the show cause notice impugned in the Petition is required to be quashed and set aside and it is also necessary to prohibit the Respondent from adjudicating the show cause notice any further."

22. Similar is the view expressed by the Punjab and Haryana High Court in the case of GPI Textiles Limited Vrs. Union of India [2018 (362) ELT 388 (P&H)] where the show cause notices issued under Section 11 A of the Central Excise Act 1944 were kept pending for 16 years. The present case is a gross one as the impugned show cause notice are kept pending since 9 th December 1993 for 29 years and even if some explanation on the part of the respondents relating to pendency of Civil Appeal No. 3793 of 2001 till

> *05.05.2004 is accepted, there is no justification for not proceeding upon the impugned show cause notice for 18 years thereafter till the impugned notice of personal hearing has been served upon the petitioner. Adjudication of such a show cause notice after 29 years would be contrary to the mandate of Section 11A(11) of the CEA 1944 and would lead to unreasonable and arbitrary results. Such proceedings therefore stands vitiated due to inordinate and unreasonable delay and are accordingly fit to be quashed. Accordingly, 15 the impugned show-cause notice dated 9 th December 1993 is quashed. The notices of personal hearing dated 30th November 2022 and 23rd December 2022 are also quashed.*
>
> *23. The writ petition is allowed in the manner and to the extent indicated herein above. Pending interlocutory application seeking stay is closed*."

48. Since the aspect of transferring matters to the call book appears to have been reagitated, that High Court in *Tata Steel* after reviewing various judgments rendered by different High Courts including the decisions of our Court in *Nanu Ram Goyal I* & *II* held as follows:

> "**18.** The respondents have also again tried to rake up the issue of transfer of such notices (SCN) to call book, when such issue has been authoritatively decided by this Court in W.P.(T) No.308 of 2023. The file notings brought on record by the respondent also does not help them in any manner; rather, it only justifies the order passed by this Court that there existed no circumstances for transfer of cases to the call book as per the circulars issued by the department itself. In this regard we observe that there is no justification/reasoning either in the counter affidavit or the file notings as to why the show cause notices were taken out of the call book only in November, 2022. There is nothing to indicate any change in circumstances which led to taking out of the cases from the call book.
>
> Apart from the other grounds, some semblance of justification is sought to be given by the respondent in the counter affidavit where they have stated that since the issue of classification had been settled, accordingly it was decided to take the show cause notices out from the call book. At multiple places in the impugned order, it has been stated that the issue had attained a finality in 2004 itself.

Regarding this stand, we hold that since the issue did attain finality in 2004 itself, there was absolutely no justification in keeping the show cause notices pending thereafter. The file notings show that though the Commissioner was apprised in 2007 that the issue had attained a finality, still a decision was taken by him on 26.10.2007 to keep the cases in the call book. Mere pendency of another matter before the Tribunal when the issue had attained a finality by the Hon'ble Apex Court, 28 cannot be a reason to keep the SCN in the call book. A lapse of 18 years from 2004 to 2022 remains unexplained. Neither is there an explanation for any change of circumstances for taking out the notices from the call book in November 2022. In such circumstances, the SCN and the OIO cannot be countenanced. Reference is made to a recent decision of the Delhi High Court in the case of ***Nanu Ram Goyal v. Comm. of CGST & CEX, WP(C) No. 13906 of 2022, order dated 18.4.2023 - Paras 30, 32, and 33***.

19. The Respondents have also sought to rely upon the decision rendered in the case of ***Union of India v. Siddhi Vinayak Syntex Pvt. Ltd., 2022 (379) ELT 553 (SC)***, to submit that the issue regarding the validity of call book is pending before the Hon'ble Supreme Court. However, as also stated in W.P.(T) No. 308 of 2023, it is the categorical submission of the Petitioner company that it is not questioning the correctness of the concept of Call Book. Rather it is the Petitioner's contention that none of the conditions stipulated for transfer of notice of call book stood satisfied. Reliance is placed on the judgment rendered by the Delhi High Court *in* ***Nanu Ram Goyal (supra) – para 28*** is quoted hereinbelow:-

> *28- In the facts of the present case it is not necessary for this court to examine the validity of the procedure of placing the matter in the 'Call Book' as it is apparent that there is a gross delay on the part of respondent no. 1 and there are no justified reasons for the same.*

20. The Respondents have also stated that the Department has decided to approach the Hon'ble Supreme Court against the judgment dated 14.2.2023 rendered in W.P.(T) No. 308 of 2023. It is however submitted by the learned ASGI that no such Special Leave Petition has been filed as on date. Even otherwise, mere filing of any Special Leave Petition does not amount to a stay of the order of the High Court. The order of the High Court must be given effect to until and unless the same is stayed by an order of the Hon'ble Supreme Court. This is well settled by the judgment rendered in the case of ***Kunhayammed v. State of Kerala, (2000) 6 SCC 359*** - Paras 14(4) and 28 are quoted hereinbelow:-

> *14 ....(4) In spite of a petition for special leave to appeal having been filed, the judgment, decree or order against*

which leave to appeal has been sought for, continues to be final, effective and binding as between the parties. Once leave to appeal has been granted, the finality of the judgment, decree or order appealed against is put in jeopardy though it continues to be binding and effective between the parties unless it is a nullity or unless the Court may pass a specific order staying or suspending the operation or execution of the judgment, decree or order under challenge.

28. Incidentally we may notice two other decisions of this Court which though not directly in point, the law laid down wherein would be of some assistance to us. In Shankar Ramchandra Abhyankar v. Krishnaji Dattatreya Bapat [(1969) 2 SCC 74 : AIR 1970 SC 1] this Court vide para 7 has emphasised three preconditions attracting applicability of doctrine of merger. They are: (i) the jurisdiction exercised should be appellate or revisional jurisdiction; (ii) the jurisdiction should have been exercised after issue of notice; and (iii) after a full hearing in presence of both the parties. Then the appellate or revisional order would replace the judgment of the lower court and constitute the only final judgment. In Sushil Kumar Sen v. State of Bihar [(1975) 1 SCC 774 : AIR 1975 SC 1185] the doctrine of merger usually applicable to orders passed in exercise of appellate or revisional jurisdiction was held to be applicable also to orders passed in exercise of review jurisdiction. This Court held that the effect of allowing an application for review of a decree is to vacate a decree passed. The decree that is subsequently passed on review whether it modifies, reverses or confirms the decree originally passed, is a new decree superseding the original one. The distinction is clear. Entertaining an application for review does not vacate the decree sought to be reviewed. It is only when the application for review has been allowed that the decree under review is vacated. Thereafter the matter is heard afresh and the decree passed therein, whatever be the nature of the new decree, would be a decree superseding the earlier one. The principle or logic flowing from the abovesaid decisions can usefully be utilised for resolving the issue at hand. Mere pendency of an application seeking leave to appeal does not put in jeopardy the finality of the decree or order sought to be subjected to exercise of appellate jurisdiction by the Supreme Court. It is only if the application is allowed and leave to appeal granted then the finality of the decree or order under challenge is jeopardised as the pendency of appeal reopens

the issues decided and this Court is then scrutinising the correctness of the decision in exercise of its appellate jurisdiction.

xxxx xxxx xxxx

23. Having regard to the aforesaid discussions and judicial pronouncements and also the fact that the issue involved in these writ applications has already been decided by this Court in W.P.(T) No.308 of 2023, we are having no hesitation in quashing the respective show cause notices (SCN) and Notice of personal hearing as mentioned in paragraph No.3 in tabular form and subsequent OIO i.e. common Order in Original dated 17.02.2023. The same are hereby quashed and set aside."

49. We then proceed to notice some judgments which have come to be rendered by our High Court in recent times. The first of those decisions which bear relevance to the issue which stands raised is in the matter of **Swatch Group India (P) Ltd. vs. Union of India**[24]. One of the contentions which appears to have been urged for the consideration of the Court therein was the validity of the SCN proceedings being liable to be examined in the backdrop of the unamended Section 28 of the Customs Act. The Court in *Swatch Group* pertinently observed as under:

"**24.** From the above, it is, therefore, clear that, with effect from March 29, 2018, it is mandatory for the proper officer to adjudicate the show-cause notices that are issued after the amendment to section 28(9) of the Customs Act within a period of six months or one year of the date of issuance as the case maybe. The same can be extended for a further period of one year by an officer senior in rank to the proper officer, after considering the circumstances under which the proper officer was prevented from passing an order within the prescribed period.

25. It is significant to note that the provisions of section 28(9) of the Customs Act were amended by the Finance Act, 2018 (Act No. 13 of 2018)). The same came into effect from March 29, 2018. The amended and unamended provisions of section 28(9) of the Customs Act have been referred above. Pursuant to the said amendment, the

[24] 2023 SCC OnLine Del 4938

words “where it is possible to do so” were deleted from section 28(9) of the Customs Act and a proviso was inserted, which provided that where a proper officer fails to determine the amount of duty within the specified period any officer senior in the rank to that of the proper officer may extend the period to a further period of six months or one year as the case may be on being satisfied of the existence of the circumstances under which the proper officer was prevented from determining the duty within the specified period. Sub-section (9A) was also inserted by the Finance Act, 2018.

26. It is also significant that an Explanation 4 was inserted by the Finance Act, 2018, which clarified that the show-cause notices issued prior to the date on which Finance Bill, 2018 receives the ascent of the President shall continue to be governed by the provisions of unamended section 28 of the Customs Act.

27. Explanation 4 as inserted vide the Finance Act, 2018 reads as under:

> “Explanation 4.—For the removal of doubts, it is hereby declared that in cases where notice has been issued for non-levy, not paid, short-levy or short-paid or erroneous refund after the 14th day of May, 2015, but before the date on which the Finance Bill, 2018 receives the assent of the President, they shall continue to be governed by the provisions of section 28 as it stood immediately before the date on which such assent is received.”

28. The learned counsel for the petitioner has vehemently contended that the amendment carried out in section 28 of the Customs Act is only procedural and applying the principles of retroactive amendment, the respondent was bound to pass an order within 12 months of coming into force the amendment to section 28(9) of the Customs Act. He relied upon the judgment passed by the honourable High Court of Punjab and Haryana in the case of *Harkaran Dass Vedpal* v. *Union of India* CWP No. 10889 of 2017, decided on July 22, 2019.

29. We do not agree with the aforesaid contention advanced on behalf of learned counsel for the petitioner. Pursuant to the judgment passed by the Punjab and Haryana High Court in *Harkaran Dass Vedpal* [*Harkaran Dass Vedpal* v. *Union of India* (CWP No. 10889 of 2017, decided on July 22, 2019 (P&H)).] , a further amendment was carried out by a Finance Act, 2020 dated March 27, 2020. The same, came into effect retrospectively from March 29, 2018. By the Finance Act, 2020, the Explanation 4 to section 28 of the Customs Act was substituted and the same reads as under:

> “Explanation 4.— For the removal of doubts, it is hereby declared that notwithstanding anything to the contrary

> contained in any judgment, decree or order of the Appellate Tribunal or any court or in any other provision of this Act or the rules or regulations made thereunder, or in any other law for the time being in force, in cases where notice has been issued for non-levy, short-levy, non-payment, short-payment or erroneous refund, prior to the 29th day of March, 2018, being the date of commencement of the Finance Act, 2018 (13 of 2018), such notice shall continue to be governed by the provisions of section 28 as it stood immediately before such date."

30. The intention of the legislation, thus, is apparent that the show-cause notices which were issued prior to the Finance Act coming into force the Finance Act, 2014 were required to be governed by unamended Act of section 28(9) of the Customs Act.

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 February 14, 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".

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. Paramsivam* v. *Sunrise Plaza* [(2013) 177 Comp Cas 484 (SC); (2013) 9 SCC 460; (2013) 4 SCC (Civ) 404; 2013 SCC OnLine SC 40.] . 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."

50. In support of its conclusion rendered in the backdrop of the unamended Section 28, the Court also had an occasion to consider the judgment rendered by our High Court in **Sunder System (P) Ltd. vs. Union of India**[25] and which was concerned with Section 73(4B) of the 1994 Act. The Division Bench in this respect observed as follows:

> "**35.** This court in *Sunder Systems Private Limited* [*Sunder System Pvt. Ltd.* v. *Union of India*, 2019 SCC OnLine Del 12137.] , had an occasion to consider section 73(4B)(a) and (b) of the Finance Act, 1994, which read as under:
>
> > "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)—
> >
> > (a) within six months from the date of notice where it is possible to do so, in respect of cases falling under 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 the proviso to sub-section (1) or the proviso to sub-section (4A)."
>
> **36.** Section 73, as referred to above, contains a provision that is identically worded as the erstwhile section 28(9) of the Customs Act. This court, after considering the facts of that case, had allowed the writ petition on the ground that the show-cause notice was not adjudicated within the time prescribed.
>
> **37.** This court after considering the circumstances as narrated by the Revenue, held as under:
>
> > "12. In the present case, from the respondents' list of dates, it is apparent that it was certainly possible for the adjudicating authority to adjudicate upon the show-cause

[25] 2019 SCC OnLine Del 12137

> notice issued to the petitioner within a period of one year at least from the conclusion of arguments on February 3, 2015, if not earlier.
>
> 13. Since that has not been done, the present writ petition is liable to be allowed on the short ground of limitation alone.""

51. Proceeding then to examine the challenge on facts, the Court in *Swatch Group* held:

> "**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.
>
> **xxxx xxxx xxxx**
>
> **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."

52. The question of delayed adjudication arose yet again in **Gala International (P) Ltd. vs. Revenue Intelligence Directorate**[26]. Hereto the challenge was raised on the ground that the SCN proceedings had not been concluded despite almost 14 years having lapsed. The Court

[26] 2023 SCC OnLine Del 6073

ultimately came to conclude that the adjudication proceedings would not sustain bearing in mind the view expressed in *Nanu Ram Goyal I* & *II* and *Swatch Group*. This is apparent from the following observations which were rendered in *Gala International* and are reproduced hereinbelow:

> "**34.** In the given facts, we are inclined to accept the petitioners' contention that the present petitions are covered by the ratio of the decision of this Court in *Nanu Ram Goyal* v. *Commr. (CGST & CE)* [*Nanu Ram Goyal* v. *Commr. (CGST & CE)*, (2023) 6 HCC (Del) 489 : (2023) 116 GSTR 495] and that deferring the adjudication of the impugned show-cause notice on account of the call book procedure was not justified. However, without going into the question as to the validity of the action of the respondents in placing the impugned show-cause notice in a call book, it is also apparent that the impugned show-cause notice was not adjudicated for a period of over eight years (30-4-2009 to 21-7-2016) even though there was no impediment in adjudicating the same.
>
> **xxxx xxxx xxxx**
>
> **36.** It is at once clear that the period within which the impugned show-cause notice was required to be adjudicated has long since elapsed. The controversy raised is squarely covered by the recent decision of this Court in *Swatch Group India (P) Ltd.* v. *Union of India* [*Swatch Group India (P) Ltd.* v. *Union of India*, 2023 SCC OnLine Del 4938] . In view of the above, it is no longer open for the respondents to proceed with the adjudication of the impugned show-cause notice. Accordingly, the impugned letters recommencing the adjudication proceedings are set aside. Since the period for adjudication of the impugned show-cause notice has elapsed, the same cannot be adjudicated."

53. To complete our review of precedents, we propose to lastly notice yet another decision rendered by a Division Bench of the Court in **Gautam Spinners vs. Commr. of Customs**[27]. *Gautam Spinners* too raised a challenge to the validity of the adjudication proceedings which had commenced pursuant to the issuance of SCNs and with it being

[27] 2023 SCC OnLine Del 4041

alleged that in light of the evident failure to conclude the same within reasonable time, the proceedings were liable to be invalidated. The respondents in *Gautam Spinners* had sought to salvage the position on facts as they prevailed, with reference to certain directions issued by the Board under sub-section (9-A) of Section 28 of the Customs Act. The Court, however, found that those directions would not enure to the benefit of the respondents since they were concerned solely with a group of assessees other than the writ petitioners. The second explanation which was proffered by the respondents' for the inordinate delay and was attributed to the flux in the legal position which prevailed in light of *Canon I* also came to be negated in light of the Court finding that the SCNs had in fact been issued by the competent jurisdictional Commissionerates as opposed to an officer of the DRI.

54. The Court then proceeded to take note of the significant amendments which had come to be introduced in Section 28 of the Customs Act by virtue of the 2018 Act and held as follows:

> "**10.** As would be evident from a reading of the aforesaid provision, sub-section (4) provides a window of five years from the relevant date within which proceedings under the said provision may be initiated. The proceedings so initiated are liable to be brought to a close in accordance with the statutory timelines which stand set out in sub-section (9). In terms of sub-section (9) and since the notice had been issued with reference to section 28(4), the proceedings were liable to be brought to a close within one year from the date of the notice and in the facts of the present case, the same being computed from August 5, 2021.
>
> **11.** Of equal significance is the amendment which came to be introduced in section 28(9)(b) in terms of the Finance Act, 2018 [Act 13 of 2018.] and pursuant to which the words "where it is possible to do so" came to be deleted. The statutory amendment as introduced in terms of the aforenoted Act 13 of 2018 thus clearly lends credence to the submission of the learned counsel for the

petitioner that the period of one year as prescribed in clause (b) was legislatively conferred a mandatory flavour.

xxxx xxxx xxxx

14. We thus find ourselves unable to accept the position of any legal impediment which could be recognised to have either fettered the jurisdiction or restrained the concerned jurisdictional Commissionerates from proceeding to finalize the SCNs' in accordance with section 28(9)(b). The direction of similar SCNs' being placed in abeyance and which is an aspect which is referred to in the directives of the Board must necessarily be recognised to be restricted to those SCNs' which may have originally been issued by the DRI. This since undisputedly the judgment in *Canon India* [(2021) 16 GSTR-OL 1 (SC); 2021 SCC OnLine SC 200.] did not place a cloud on the authority and jurisdiction of Customs authorities to initiate proceedings under section 28(4) or take those proceedings to their logical conclusion. The competent authority of Customs would have been justified in placing the impugned SCN proceedings pending only in a situation where the original SCNs' had been issued by an officer of the DRI. This since it was the aforenoted situation which confronted the Department in the matter of Anil Agarwal. It was the factual position as obtaining in the matter of Anil Agarwal and 11 other noticees which was liable to be understood to constitute the "similar matter" spoken of in section 28(9A)(c) of the Act.

15. We are thus of the firm opinion that the proceedings initiated against the present petitioners cannot be said to be covered under the directives of the Board noticed hereinabove. Those SCNs' would also not fall within the ambit of section 28(9A)(c). Since admittedly, the maximum period as prescribed under section 28(9) has expired, those proceedings would not survive in law."

55. Before us, the respondents while controverting the contentions of the writ petitioners as noted above, have firstly alluded to the individual facts which prevail and valiantly sought to explain away the delay caused. It was also alleged that in most of the cases, the petitioners had failed to render cooperation in the adjudication proceedings and consequently, the delay cannot be attributed to the respondents. They also sought to rely upon the directives of the Board which had been issued from time to time to submit that those clearly bound the

individual adjudicating authorities and that they were in terms thereof constrained to place matters in abeyance.

56. While we have already extracted the instructions dated 29 June 2016 and 17 March 2021 hereinabove, in order to evaluate and appreciate the submissions addressed by the respondents, it would also be pertinent to refer to two additional instructions dated 03 January 2017 and 03 November 2017 which are reproduced hereinbelow:

"F. No. 276/104/2016-C.8A (Pt.)
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
(Legal Cell)
****
'C' Wing, 5th Floor, HUDCO-VISHALA, Building
Bhikaji Cama Place, R.K. Puram,
New Delhi – 66: dted the 03.01.2017
Instruction

To,

1. All Principal Chief Commissioners/ Chief Commissioners of Customs, Central Excise and Service Tax;

2. The Director General of Revenue Intelligence/ Central Excise Intelligence;

3. webmaster.cbec@icegate.gov.in

Sir/ Madam,

Sub: Instruction to Show Cause Notice issued in relation to sub-section (11) of Section 28 of the Customs Act, 1962 on the competency of officers of DGDRI, DGCEI and Customs (Prev.) in the Call Book- reg.

I am directed to refer to Board Instructions of even no. dated 29.06.2016 & 28.12.2016 (copy available on CBEC website) on the above subject.

2. In this regard, I am directed to say that the Board inter alia, had referred the issue of pending adjudications of cases covered by the above said Board Instruction to the Ld. Solicitor General of India. The Ld. Solicitor General has opined, inter alia, that in view of the unconditional stay in force, granted by the Hon'ble Supreme

Court, the Department could continue with adjudication of the Show Cause Notices hitherto covered by the Mangali Impex judgment.

3. Thus, in view of the opinion of the Ld. Solicitor General, the Board Instruction of even no. dated 29.06.2016 & 28.12.2016 on the above subject are hereby withdrawn. Consequently, the Show Cause Notices, which were kept in the Call Book in view of the above said Board Instructions, needs to be taken out of the Call Book immediately and the adjudication of such Show Cause Notices are to be proceeded with in accordance with law.

Yours faithfully,

(Harsh Vardhan)
Senior Analyst
Ph. 011- 26195405

xxxx xxxx xxxx

F. No.437/143/2009-Cus.IV
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
229A-North Block, New Delhi
Dated: the 3rd November, 2017

OFFICE MEMORANDUM

Subject: Monitoring of Show Cause Notices issued in relation to M/s. Mangli Impex judgement and their adjudication-Reg.

The undersigned is directed to refer to D.O.F. No.437/143/2009-Cus.IV.-IV-pt.II dated 06.1.2017 of Special Secretary & Member, CBEC wherein it was asked to take out Show Cause Notice s issued prior to 08.07.2011 from the call book and draw up an action plan for adjudication of the cases in a time bound manner.

2. In this regard, it has been brought to the notice of the Board that Hon'ble CESTAT has passed orders on a batch of appeals in the backdrop of the Mangali Impex case, pending in the Hon'ble Supreme Court. Owing to the judgement of the Hon'ble CESTAT in the said cases, remanding back the appeals to the concerned authorities to pass appropriate orders on the basis of the outcome of the Supreme Court in the Mangali Impex case. Adjudication Authorities are constrained not to pass orders, in such cases.

3. In the present scenario, Board is of the view that it would not be feasible to adhere to earlier instructions issued vide the saie D.O. letter of the Member (CBEC) to carry out adjudication of SCNs pertaining to period prior to 08.07.2011.

4. Keeping in view of the above, undersigned is further directed to request you to take suitable further action and inform the field formations accordingly.

(Anil Kumar Sapra)
OSD (Customs-IV)

Commissioner (legal),
5th Floor, Hudco Vishala Building,
'B' Wing, Bhikaji Cama Place,
R.K. Puram, New Delhi."

57. As is evident from a reading of the instructions dated 29 June 2016, the same was prompted by the decision handed down by our Court in *Mangali Impex*. The aforenoted instruction acknowledges that notwithstanding the decision of the Supreme Court in *Sayed Ali* and the validating amendments introduced in Section 28, in light of the challenge pending before the Supreme Court against the judgment in *Mangali Impex*, it would be appropriate to transfer all pending adjudications to the call book till disposal of the matter by the Supreme Court. It is relevant to note that insofar as the challenge to *Mangali Impex* is concerned, the Supreme Court had by its order dated 01 August 2016 stayed the operation of the judgment. The respondents had thereafter and bearing in consideration the unconditional stay that was granted by the Supreme Court, issued fresh instructions on 03 January 2016 withdrawing the earlier instruction dated 29 June 2016 thus directing all concerned to take out matters which had been transferred to the call book.

58. Inexplicably and a few months thereafter, the Board took yet another turn this time ostensibly prompted by a decision rendered by the CESTAT on a batch of appeals and which had remitted matters to adjudicating authorities in light of the pendency of the appeal before the

Supreme Court in the matter of *Mangali Impex*. The Board thus opined that *"it would not be feasible to adhere to earlier instructions"*.

59. Seeking to overcome the various judgments that were cited from the side of the writ petitioners, the respondents principally rested their submissions on two brief orders passed by the Supreme Court in *Swati Menthol* and **CCE vs. M/s Bhagsons Paint Industry (India)**[28]. In *Bhagsons Paint Industry*, the Supreme Court while disposing of an appeal of the Department had observed as follows:

> "**[Order].** - The Tribunal in an appeal arising under the Central Excise Act held that the adjudication made after a lapse of nearly nine years after the issue of show cause notice is not permissible and set aside the same.
>
> 2. 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 or penalty. In these circumstances we think the view taken by the Tribunal is not justified and we set aside the order made by the Tribunal and remit the matter to the Tribunal for fresh disposal in accordance with law after restoration of the appeal to its original number. The appeal is allowed accordingly."

60. Similarly, in *Swati Menthol*, the Supreme Court had held as under:

> "6. The appellant Department is aggrieved by the impugned order dated 17.05.2021 by which the High Court has closed the proceedings initiated by virtue of two show cause notices dated 02.03.2010 and 06.05.2010 issued to the respondents proposing to demand the CENVAT credit availed by the respondent(s) during the period from April, 2005 to March, 2009 and further credit availed by the respondent(s) during April, 2009 to February, 2010. Pursuant to the issuance of the notices and on receipt of the same, the respondent(s) herein filed their replies to the show cause notices.
>
> 7. Thereafter, the matter was posted for personal hearing of the respondent(s) who were requested to appear for personal hearing

[28] (2003) 158 ELT 129 (SC)

before the Commissioner, Central GST Commissionerate, Chandigarh. However, the matter did not progress on several occasions on account of the respondents failure to appear before the said authority. Thereafter, by communication dated 10.10.2018, the respondents were informed that personal hearing, which was to take place had been adjourned sine die and the next date of hearing would be informed later. Since there was no further communication from the said Authority and three years had since passed, CWP No.9340/2021 was filed before the High Court seeking quashing of the notices issued by the Department and also the proceedings commenced thereon. The High Court has accepted the contentions of the respondent(s) and has quashed the show cause notices issued by the Appellant(s)/Department. As a result, the proceedings have also been concluded.

Learned Additional Solicitor General submitted that the abrupt conclusion of the proceedings pursuant to the impugned order has caused prejudice to the Revenue inasmuch as the proceedings pursuant to the issuance of the show cause notices and the demand made have not been adjudicated upon, whereas the respondent(s) are liable to pay to the Department in terms of the demand made in the show cause notices. He submitted that there were genuine reasons as to why the proceedings could not conclude inasmuch as a matter similar to the matter under consideration was the subject matter of a writ petition before the Jammu & Kashmir High Court and therefore, a decision was taken to recommence the proceedings following the decision from the High Court being received by the Department.

He further submitted that if the impugned order is to be affirmed by this Court, then the Revenue would be prejudiced inasmuch as the demands made by the Department would be stifled on account of the impugned order passed by the High Court.

Per contra, learned counsel for the respondent drew our attention to the fact that for ten long years the show cause notices remained without any adjudication and in a similar matter, this Court has, in the peculiar facts of the said case, affirmed the order of the High Court and therefore, the same may be followed in respect of the instant proceedings also.

8. By way of reply, learned Additional Solicitor General submitted that if some time is granted and an opportunity is given to the respondent(s), the proceedings would be concluded within the time frame to be fixed by this Court and therefore, appropriate orders may be made in this matter.

9. We find that the proceedings which were commenced by virtue of the two show cause notices referred to above have not been concluded although over a decade has passed. Be that as it may, we find that submission made by learned Additional Solicitor General as

> to concluding the proceedings within the time frame to be fixed by this Court needs to be accepted.
>
> 10. In the circumstances, we set aside the impugned order and we remand the matter to the Commissioner of GST (adjudicating Authority) with a direction to conclude the proceedings within a period of eight weeks from 10.08.2023. Since the respondent(s) is/are represented by learned counsel, the respondent(s) is/are directed to appear before the concerned Authority on that date (10.08.2023) without expecting any separate notices to be issued by the said Authority to the respondent(s) herein.
>
> 11. It is needless to observe that the Authority which is seized of the matter shall give adequate opportunity to both sides and conclude the proceedings within a period of eight weeks from 10.08.2023.
>
> 12. All contentions on both sides are left open, to be taken up before the concerned Authority.
>
> 13. The Appeal is allowed and disposed in the aforesaid terms. No costs.
>
> 14. Pending application(s) shall stand disposed."

61. It was on the basis of the aforenoted orders of the Supreme Court that learned counsels for the respondents sought to contend that delay in itself would not be sufficient ground to annul or interdict adjudication proceedings and that notwithstanding an assertion of an inordinate delay, the Court would be justified in remitting the matter to the adjudicating authorities with appropriate directions for expeditious closure. It is these rival submissions which fall for our consideration.

VI. THE 'STATE OF FLUX' QUESTION

62. We propose to firstly deal with the contention of the respondents that it was the unsettled position in law which led to a delay in adjudication. As noticed hereinabove, as per the respondents it was the decisions in *Sayed Ali*, *Mangali Impex* and *Canon I* which had cast a cloud on their right to pursue adjudication proceedings and impeded their right to conclude proceedings with expedition. It must at the outset

be noted that the record would reflect that not all of the SCN proceedings issued pan-India had come to be penned by officers of the DRI. This was a position which the Court had an occasion to take note of in *Gautam Spinners.*

63. Even in cases where the proceedings may have been commenced by an officer of the DRI and if we were to assume that the respondents were compelled to stay their hands in light of the judgment in *Sayed Ali*, we fail to discern any factor which may have either prevented or restrained the respondents from initiating proceedings by placing pending matters in the hands of the Customs officers.

64. Regard must also be had to the fundamental basis underlying the passing of the Amendment and Validation Act in 2011. As is evident from a reading of its **Statement of Objects and Reasons**[29], it was the underlying intent of the Legislature to overcome the decision in *Sayed Ali* and thus validate all adjudicatory action that may have been initiated by officers of the DRI. The SOR is reproduced hereinbelow:

> "**Prefatory Note—Statement of Objects and Reasons**. —The Customs Act, 1962 consolidates and amends the law relating to customs. Clause (34) of Section 2 of the said Act defines the expression "proper officer" in relating to the functions under the said Act to mean the officer of customs who is assigned those functions by the Central Board of Excise and Customs or the Commissioner of Customs. Recently, a question has arisen as to whether the Commissioner of Customs (Preventive) is competent to exercise and discharge the powers of a proper officer for issue of a notice for demand of duty. The Hon'ble Supreme Court of India in *Commr. of Customs* v. *Sayed Ali*, (2011) 3 SCC 537 held that only a customs officer who has been specifically assigned the duties of assessment and re-assessment in the jurisdiction area is competent to issue a notice for the demand of duty as a proper officer. As such the Commissioner of Customs (Preventive) who has not been assigned the function of a "proper officer" for the purposes of assessment or

[29] SOR

re-assessment of duty and issue of Show Cause Notice to demand customs duty under Section 17 read with Section 28 of the Act in respect of goods entered for home consumption is not competent to function as a proper officer which has not been the legislative intent.

2. In view of the above the Show Cause Notices issued over the time by the Customs Officers such as those of the Commissionerates of Customs (Preventive), Directorate General of Revenue Intelligence and others, who were not specifically assigned the functions of assessment and re-assessment of customs duty may be construed as invalid. The result would be huge loss of revenue to the exchequer and disruption in the revenue already mobilized in cases already adjudicated. However, having regard to the urgency of the matter, the Government issued notification on 6th July, 2011 specifically declaring certain officers as proper officers for the aforesaid purposes.

3. In the circumstances, it has become necessary to clarify the true legislative intent that Show Cause Notices issued by Customs Officers, i.e., officers of the Commissionerates of Customs (Preventive), Directorate General of Revenue Intelligence (DRI), Directorate General of Central Excise Intelligence (DGCEI) and Central Excise Commissionerates for demanding customs duty not levied or short levied or erroneously refunded in respect of goods imported are valid, irrespective of the fact that any specific assignment as proper officer was issued or not. It is, therefore, purposed to amend the Customs Act, 1962 retrospectively and to validate anything done or any action taken under the said Act in pursuance of the provisions of the said Act at all material times irrespective of issuance of any specific assignment on 6th July, 2011.

4. The Bill seeks to achieve the above objects."

65. It was with the aforesaid avowed objective that sub-section (11) came to be inserted in Section 28 of the Customs Act. As is manifest from a plain reading of Section 28(11), the intent of that provision clearly was to save and validate all proceedings initiated prior to 06 July 2011. It was in furtherance of the aforesaid legislative objective that the provision incorporated a legal fiction by deployment of the phrase "*shall be deemed to have and always had*". This deeming fiction stood extended not only with respect to the power to assess under Section 17 but also bid us to acknowledge that all persons

appointed as officers of customs under Section 4(1) of the Customs Act would be deemed to have been proper officers for the purposes of reassessment and reopening under Section 28. It thus becomes manifest that despite the statute having duly empowered the respondents to continue proceedings and specifically validating all action initiated prior to 06 July 2011, the respondents failed to act in terms of that legislative command.

66. While it is true that in *Mangali Impex*, the validity of the Amendment and Validation Act had come to be questioned, the judgment was ultimately stayed by the Supreme Court on 01 August 2016. The defence set up by the respondents would also merit evaluation bearing in mind the conclusions which came to be recorded by the Court in its judgment in *Mangali Impex*. The Court while ruling on the impact of Section 28(11) in paragraph 61 firstly held as follows:

> "**61.** Keeping the above principles in mind when section 28 has been recasted by Act 8 of 2011 with effect from April 8, 2011 read with section 28(11) which was introduced by the Customs (Amendment and Validation) Act, 2011 with effect from September 16, 2011, the position that emerges is as under :
>
> (i) Section 28(11) states that all persons appointed as customs officers prior to July 6, 2011 will be deemed to always have had the power of assessment under section 17 and shall be deemed to always have been "proper officers". Further, this is notwithstanding anything to the contrary in any judgment, decree or order of any court of law. While the said provision is intended to overcome the defect pointed out in the decision of the Supreme Court in Sayed Ali [2011] 7 GSTR 338 (SC), section 28(11) of the Act does not state that it would operate notwithstanding anything contained either in the Act or any other Act for the time being in force. In other words, the Legislature has not made it explicit that section 28(11) would prevail notwithstanding anything contained in Explanation 2 to section 28 of the Act.

(ii) On the contrary, Explanation 2 which, as it presently stands, appears after section 28(11) of the Act as already stood enacted with effect from April 8, 2011 opens with the words "for the removal of doubts". It is made clear that non-levy, short-levy or erroneous refund prior to April 8, 2011 would be governed by section 28 "as it stood immediately before the date on which such assent is received".

(iii) Section 28(11), as it presently stands, was not in the statute book prior to April 8, 2011. Therefore, no reference can be made to section 28(11) of the Act for determining not only the procedure but the very basis on which a non-levy, short-levy or erroneous refund occurring prior to April 8, 2011 should be dealt with.

(iv) Prior to April 8, 2011 and even subsequent thereto, only a "proper officer" who has been "assigned" specific functions by the Central Board of Excise and Customs or the Commissioner as amended by section 2(34) of the Act could undertake the task of non-levy, short-levy or erroneous refund. Therefore, for any non-levy, short-levy or erroneous refund prior to April 8, 2011, an officer of the customs who has not been specifically assigned such function in terms of the Act cannot exercise such power.

(v) Section 28(11), therefore, does not validate the show-cause notices issued by the Directorate of Revenue Intelligence, Directorate General of Central Excise Intelligence officers who are not "proper officers" for the purposes of section 2(34) of the Act if it amounted to undertaking any assessment or reassessment of a non-levy, short-levy or erroneous refund prior to April 8, 2011.

(vi) It is only for a period between April 8, 2011 and July 6, 2011 that such deemed "proper officer" can be said to have been given retrospective power to deal with non-levy, short-levy or erroneous refund for any period subsequent to April 8, 2011, i.e., the date on which section 28(11) read with Explanation 2 could be said to have come into force."

67. It further held that Section 28(11) if upheld would result in the conferment of jurisdiction on a "plurality of officers" and thus fall foul of Article 14 of the Constitution. It thus proceeded to record the following conclusions:

"**69.** The court also finds merit in the contention that if jurisdiction is exercised by one officer of the customs or of the Directorate of

Revenue Intelligence or Directorate General of Central Excise Intelligence, it should impliedly oust the jurisdiction of other officers over the same subject matter. The doctrine of comity of jurisdiction requires that for the proper administration of justice there should not be an overlapping of the exercise of powers and functions. The decision of the Punjab and Haryana High Court in Kenapo Textiles P. Ltd. v. State of Haryana [1992] 84 STC 88 (P&H) and the decision of the Supreme Court in India Household and Healthcare Ltd. v. LG Household and Healthcare Ltd. [2007] 136 Comp Cas621 (SC) are relevant in this context.

Conclusion on effect and validity of section 28(11)

70. The net result of the above discussion is that the Department cannot seek to rely upon section 28(11) of the Act as authorising the officers of the customs, Directorate of Revenue Intelligence, Directorate General of Central Excise Intelligence, etc., to exercise powers in relation to non-levy, short-levy or erroneous refund for a period prior to April 8, 2011 if, in fact, there was no proper assigning of the functions of reassessment or assessment in favour of such officers who issued such show-cause notices since they were not "proper officers" for the purposes of section 2(34) of the Act and further because Explanation 2 to section 28 as presently enacted makes it explicit that such non-levy, short-levy or erroneous refund prior to April 8, 2011 would continue to be governed only by section 28 as it stood prior to that date and not the newly recast section 28 of the Act.

Section 28(11) interpreted in the above terms would not suffer the vice of unconstitutionality. Else, it would grant wide powers of assessment and enforcement to a wide range of officers, not limited to customs officers, without any limits as to territorial and subject matter jurisdiction and in such event the provision would be vulnerable to being declared unconstitutional.

As regards the period subsequent to April 8, 2011, it is evident that if the administrative chaos as envisaged by the Supreme Court in Sayed Ali [2011] 7 GSTR 338 (SC) should not come about, there cannot be any duplicating and/or overlapping of jurisdiction of the officers. It would have to be ensured through proper co-ordination and administrative instructions issued by the Central Board of Excise and Customs that once a show-cause notice is issued specifying the adjudicating officer to whom it is answerable, then that adjudication officer, subject to such officer being a "proper officer" to whom the function of assessment has been assigned in terms of section 2(34) of the Act, will alone proceed to adjudicate the show-cause notice to the exclusion of all other officers who may have the power in relation to that subject matter.

> The question as to the constitutional validity and effect of section 28(11) of the Act is answered accordingly."

68. Quite apart from *Mangali Impex* having been overruled in *Canon II*, we find that our original judgment clearly appears to have misconstrued the intent underlying the insertion of Explanation 2 to Section 28 of the Customs Act. It also failed to appreciate the indubitable fact that while the said provision came to be introduced in the statute book on 08 April 2011, the validating provision comprised in sub-section (11) came to be inserted thereafter on 26 September 2011. As is evident from the SOR of the Validation and Amendment Act, sub-section (11) was inserted with retrospective effect and bid us to assume that it would always be deemed to have formed part of the original statute. It was thus clearly not impacted by Explanation 2 and which in any case, as the Supreme Court explains in *Canon II*, was intended to subserve an independent objective. We deem it apposite to extract the following paragraphs from *Canon II* to buttress our conclusions:

> "**138.** As stated in the foregoing extract, sub-section (11) was introduced in the statute to remedy the defects highlighted by this Court in the case of *Sayed Ali* (supra) and the same retrospectively empowered all officers of customs appointed under Section 4(1) before 06.07.2011 to conduct assessments under Section 17 of the Act and to be proper officers for the purpose of Section 28.
>
> **139.** The Statement of Objects and Reasons of the Validation Act explained that the introduction of Section 28(11) was necessary because the position of law on the functions of proper officers as interpreted by this Court in *Sayed Ali* (supra) and the consequent invalidation of show cause notices issued by the Commissionerates of Customs (Preventive), DRI and others, was not the legislative intent. Parliament clarified that show cause notices issued by officers of the Commissionerates of Customs (Preventive), DRI, Directorate General of Central Excise Intelligence (DGCEI) and Central Excise Commissionerates for demanding customs duty not levied or short levied or erroneously refunded under Section 28 in respect of goods

imported are valid, irrespective of whether any specific assignment as proper officer was issued.

xxxx xxxx xxxx

142. The very same argument has been canvassed before us by the respondents herein. To comprehensively address the submissions made before us, we find it necessary to address the following three issues:

(i) What is the scope of Explanation 2 to Section 28?

(ii) Whether the field of operation of Section 28(11) and Explanation 2 overlaps? In other words, what is the scope of the non-obstante clause in sub-section (11)?

(iii) Whether Section 28(11) cures the defect pointed out in *Sayed Ali* (supra)?

xxxx xxxx xxxx

147. Having analysed the aforesaid modifications made by Parliament to old Section 28, we can say with certainty that none of the changes made by the amendments to Section 28 has any impact on the competence of the proper officer for the purposes of fulfilment of functions under Section 28. In our considered view, the only major change that warrants the clarification provided under Explanation 2 is the distinction with respect to the limitation period for the issuance of show cause notices.

xxxx xxxx xxxx

151. Further, the finding in *Mangali Impex* (supra) that Section 28(11) is overbroad and confers the powers of the proper officer to multiple sets of customs officers without any territorial or pecuniary jurisdictional limit which in turn may lead to "utter chaos and confusion" as highlighted in *Sayed Ali* (supra), is misconceived in our view. The apprehension of the petitioner therein was that plurality of proper officers empowered under Section 28 would result in more than one show cause notice and a consequent misuse of the provision, which would be detrimental to the interests of the persons chargeable with the payment of duty. Although, *Mangali Impex* (supra) declared Section 28(11) to be invalid on this ground, it suggested that the Board should issue instructions in its administrative capacity that once a show cause notice is issued specifying an adjudicating authority subject to such an officer being the proper officer for the purposes of Section 28, then he or she alone should proceed to adjudicate that particular show cause notice to the exclusion of all other officers who may have power in relation to that subject matter. We find this to be a reasonable construal of the import and application of Section 28(11).

xxxx xxxx xxxx

154. Thus, we are of the considered view that the enactment of sub-section (11) of Section 28 cures the defect pointed out in *Sayed Ali* (supra) and the judgment in *Mangali Impex* (supra) deserves to be set aside.

155. It follows from the above discussion that sub-section (11) of Section 28 is constitutionally valid, and its application is not limited to the period between 08.04.2011 and 16.09.2011.

156. For the reasons in the foregoing paragraphs, we hold that the Bombay High Court judgment in *Sunil Gupta* (supra) lays down the correct position of law, whereas the Delhi High Court decision in *Mangali Impex* (supra) is incorrect and is consequently set aside."

69. For the sake of completeness, it would be pertinent to take note of the subsequent repeal of the Validation and Amendment Act in terms of the **Repealing and Amending Act, 2019**[30]. However, the same would be of little consequence in light of Section 4 thereof and which is extracted hereinbelow:

"4. The repeal by this Act of any enactment shall not affect any other enactment in which the repealed enactment has been applied, incorporated or referred to;

and this Act shall not affect the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred, or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted, or the proof of any past act or thing;

nor shall this Act affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed or recognised or derived by, in or from any enactment hereby repealed;

nor shall the repeal by this Act of any enactment revive or restore any jurisdiction, office, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not now existing or in force."

[30] 2019 Act

70. Regard must also be had to the fact that while *Mangali Impex* had come to be decided on 03 May 2016, Parliament intervened yet again and introduced the following significant provision in Section 28 in terms of the 2018 Act. We deem it appropriate to advert to Explanation 4 and which at the relevant time was framed in the following terms:

> "*Explanation* 4.—For the removal of doubts, it is hereby declared that in cases where notice has been issued for non-levy, not paid, short-levy or short-paid or erroneous refund after the 14th day of May, 2015, but before the date on which the Finance Bill, 2018 receives the assent of the President, they shall continue to be governed by the provisions of Section 28 as it stood immediately before the date on which such assent is received."

71. The said provision stood untouched by any judicial declaration, and which could have been recognised as impeding the right of the respondents to pursue adjudication proceedings which had already been initiated. The legislative intent underlying Explanation 4 came to be further fortified by virtue of the 2020 Act and which substituted the existing provision with the following to operate retrospectively from 29 March 2018, the date when the 2018 Act had come to be promulgated:

> "Explanation 4.—For the removal of doubts, it is hereby declared that notwithstanding anything to the contrary contained in any judgment, decree or order of the Appellate Tribunal or any Court or in any other provision of this Act or the rules or regulations made thereunder, or in any other law for the time being in force, in cases where notice has been issued for non-levy, short-levy, non-payment, short payment or erroneous refund, prior to the 29th day of March, 2018, being the date of commencement of the Finance Act, 2018 (13 of 2018), such notice shall continue to be governed by the provisions of Section 28 as it stood immediately before such date."

Thus, all proceedings emanating from SCNs issued prior to 29 March 2018 were ordained to be governed by Section 28 as it stood immediately before that date. The clear intent of Explanation 4 was to

insulate proceedings that were pending on the date when the 2018 Act came to be promulgated and thus be freed from the impact of cessation and interdiction of proceedings in light of the two Provisos which had come to be inserted in Section 28(9).

72. It would be pertinent to recall that the First Proviso to Section 28(9) had stipulated that where a proper officer fails to conclude adjudication proceedings in accordance with the time frames specified in clauses (a) or (b) of Section 28(9), any officer senior to the proper officer, having regard to circumstances which may have prevailed and prevented conclusion of pending adjudication, to extend the period so specified by a further period of six months and one year respectively. It was, however, the Second Proviso inserted in terms of the 2018 Act which brought closure to pending proceedings and dealt with the contingency where the proper officer was to fail to conclude a determination even within the extended period. In that eventuality, the Second Proviso declared that pending proceedings would be deemed to have come to an end as if no notice had been issued. Thus, the Second Proviso to Section 28(9) would have resulted in the termination of all proceedings which the proper officer would have failed to conclude even within the extended timelines prescribed by the First Proviso to Section 28(9). It was perhaps to overcome the fallout of the Second Proviso which formed the basis for the introduction of Explanations 2 and 4.

73. It thus becomes manifest that the respondents while dealing with all proceedings initiated prior to 29 March 2018 were required to adhere to the precept of reasonable period and nothing further. The

Legislature had thus introduced appropriate curial provisions in the shape of sub-section (11) and Explanations 2 and 4 so as to enable and empower the respondents to conclude pending proceedings. By the time *Canon I* came to be pronounced on 09 March 2021, both sub-section (11), as well as Explanation 4 existed on the statute book. It is pertinent to note that although *Canon I* had doubted the authorization made in favour of officers of the DRI, the said decision had not struck down or adversely commented upon the scope and underlying intent of Section 28(11). In any event, post *Canon I*, the Legislature intervened yet again when it passed the 2022 Act by virtue of Section 97 and made the following provisions:

> "**97. Validation of certain actions taken under Customs Act**.— Notwithstanding anything contained in any judgment, decree or order of any court, tribunal, or other authority, or in the provisions of the Customs Act, 1962 (Act 52 of 1962) (hereinafter referred to as the Customs Act),—
>
> (*i*) anything done or any duty performed or any action taken or purported to have been taken or done under Chapters V, VAA, VI, IX, X, XI, XII, XIIA, XIII, XIV, XVI and XVII of the Customs Act, as it stood prior to its amendment by this Act, shall be deemed to have been validly done or performed or taken;
>
> (*ii*) any notification issued under the Customs Act for appointing or assigning functions to any officer shall be deemed to have been validly issued for all purposes, including for the purposes of Section 6;
>
> (*iii*) for the purposes of this section, Sections 2, 3 and 5 of the Customs Act, as amended by this Act, shall have and shall always be deemed to have effect for all purposes as if the provisions of the Customs Act, as amended by this Act, had been in force at all material times.
>
> *Explanation*.—For the purposes of this section, it is hereby clarified that any proceeding arising out of any action taken under this section and pending on the date of commencement of this Act shall be disposed of in accordance with the provisions of the Customs Act, as amended by this Act."

Despite these legislative interventions, the respondents continued to abstain from taking proactive and effective steps to conclude proceedings that had been initiated as far back as 2006.

VII. DELAY IN ADJUDICATION: ITS IMPACT

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, it would be pertinent to take note of the observations of the Supreme Court in **Union of India vs. Citi Bank**[31], when it had held it would be unfair and unreasonable to countenance such powers being exercised in respect of transactions which had occurred more than eight years ago:

> "**25.** It can thus clearly be seen that the said Rules require every Banking Company to preserve records stated in Rule 2 for five years and eight years for records mentioned in Rule 3 respectively. No doubt that under Rule 4 of the said Rules, the RBI, having regard to the factors specified in sub-section (1) of Section 35-A, by an order in writing, is empowered to direct any banking company to preserve any of the books, accounts or other documents, etc. for a period longer than the period specified under the said Rules.
>
> **26.** Undisputedly, no such order has been placed on record which required the respondents-Banks to preserve records concerning the transactions in question for a period longer than eight years.
>
> **27.** It could thus be seen that even under the said Rules, the Banks are required to preserve the record for five years and eight years respectively. On this ground also, permitting the show cause notices and the proceedings continued thereunder of the transactions which have taken place much prior to eight years would be unfair and unreasonable."

76. Way back in 1969, the Supreme Court in **State of Gujarat vs. Patil Raghav Natha**[32], 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:

[31] 2022 SCC OnLine SC 1073
[32] (1969) 2 SCC 187

> "**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.
>
> **12**. It seems to us that Section 65 itself indicates the length of the reasonable time within which the Commissioner must act under Section 211. Under Section 65 of the Code if the Collector does not inform the applicant of his decision on the application within a period of three months the permission applied for shall be deemed to have been granted. This section shows that a period of three months is considered ample for the Collector to make up his mind and beyond that the legislature thinks that the matter is so urgent that permission shall be deemed to have been granted. Reading Sections 211 and 65 together it seems to us that the Commissioner must exercise his revisional powers within a few months of the order of the Collector. This is reasonable time because after the grant of the permission for building purposes the occupant is likely to spend money on starting building operations at least within a few months from the date of the permission. In this case the Commissioner set aside the order of the Collector on October 12, 1961 i.e more than a year after the order and it seems to us that this order was passed too late."

77. Similarly, in **Govt. of India vs. Citedal Fine Pharmaceuticals**[33], 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

[33] (1989) 3 SCC 483

> 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**[34], 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. It enunciated these precepts in the following terms:

> "**92.** This Court in the judgment authored by one of us (Sanjiv Khanna, J.) in *Bhavesh Pabari* [*SEBI* v. *Bhavesh Pabari*, (2019) 5 SCC 90] had examined the question of delay and laches in initiating proceedings under Chapter VI-A of the Act and the principle of law that when no limitation period is prescribed proceedings should be initiated within a reasonable time and what would be reasonable time would depend upon facts and circumstances of each case. In this regard, it was held as under : (SCC pp. 104-05, para 35)
>
> > "*35.* The appellants have also contended that in the absence of any prescribed limitation period, SEBI should have

[34] (2023) 2 SCC 643

issued show-cause notice within a reasonable time and there being a delay of about 8 years in issuance of show-cause notice in 2014, the proceedings should have been dropped. This contention was not raised before the adjudicating officer in the written submissions or the reply furnished. It is not clear whether this contention was argued before the Appellate Tribunal. There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created, etc. The show-cause notice in the present case had specifically referred to the respective dates of default and the date of compliance, which was made between 30-8-2011 to 29-11-2011 (delay was between 927 days to 1897 days). Only upon compliance being made that the defaults had come to notice. In the aforesaid background, and so noticing the quantum of fine/penalty imposed, we do not find good ground and reason to interfere."

93. The directions given in the aforesaid quotation should not be understood as empowering the authorities/Board to initiate action at any time. In the absence of any period of time and limitation prescribed by the enactment, every authority is to exercise power within a reasonable period. What would be the reasonable period would depend upon facts of each case, such as whether the violation was hidden and camouflaged and thereby the Board or the authorities did not have any knowledge. Though, no hard and fast rules can be laid down in this regard as determination of the question will depend on the facts of each case, the nature of the statute, the rights and liabilities thereunder and other consequences, including prejudice caused and whether third party rights have been created are relevant factors. Whenever a question with regard to inordinate delay in issuance of a show-cause notice is made, it is open to the noticee to contend that the show-cause notice is bad on the ground of delay and it is the duty of the authority/officer to consider the question objectively, fairly and in a rational manner. There is public interest involved in not taking up and spending time on stale matters and, therefore, exercise of power, even when no time is specified, should be done within reasonable time. [See *State of Gujarat* v. *Patil Raghav Natha*, (1969) 2 SCC 187, para 11; *Mansaram* v. *S.P. Pathak*, (1984) 1 SCC 125, para 12; *Union of India* v. *Citedal Fine Pharmaceuticals*, (1989) 3 SCC 483, para 6 : 1989 SCC (Tax) 464; *State of Orissa* v. *Brundaban Sharma*, 1995 Supp (3) SCC 249, para 16; *State of Punjab* v. *Bhatinda District Coop. Milk Producers Union Ltd.*, (2007) 11 SCC 363.] This prevents miscarriage of

justice, misuse and abuse of the power as well as ensures that the violation of the provisions are checked and penalised without delay, thereby effectuating the purpose behind the enactment."

VIII. CALL BOOK AND THE SECTION 28 REQUIREMENTS

79. We also bear in mind the conceded position of the respondents having woefully failed to adhere to the procedure contemplated under the First Proviso to Section 28(9) and which enables the proper officer to seek a further extension of time dependent on whether proceedings were referable to clause (a) or (b) of Section 28(9). As was noticed by us hereinabove, both in respect of cases falling under Section 28(1) or 28(4), the proper officer stood enabled by statute to seek further extension of time. Additionally, and if the respondents were to resort to sub-section (9-A), they were statutorily obliged to inform the importer of the reasons on account of which they were unable to conclude the adjudication. Upon such information and notice being provided, the provisions of sub-section (9) would have ceased to apply and it would have been open for the proceedings to remain suspended till the reasons, which had prompted the respondents to place proceedings in abeyance by virtue of sub-section (9-A), had ceased to exist.

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).

81. As per the writ petitioners, the action of placement of matters in the call book was not preceded by any notice or information that may have been provided. In *Nanu Ram Goyal I,* this Court had an occasion to address the issue of whether the respondents were obligated to inform the petitioner that the SCN was being placed in the "call book" as per the Board's circulars. The Court noted that while placing matters in the "call book" was permissible, that action would have to be preceded by the assessee being placed on due notice. In that decision, it was observed as hereunder:

> "**34.** It is also relevant to note that the petitioner was provided no information that the impugned show-cause notice has been placed in the, "call book". Even if it is accepted that it is permissible for the respondents to place the matter in the "call book" which this Court does not-it was necessary for the respondents to have communicated the said fact to the petitioner. There are a series of decisions rendered by the Bombay High Court restraining the respondents from continuing with the proceedings in cases where the matters were placed in the "call book" without any information to the assessee. It is apposite to refer to a few of those decisions.
>
> **xxxx xxxx xxxx**
>
> **36.** In *ATA Freight Line (I) (P) Ltd.* v. *Union of India* [*ATA Freight Line (I) (P) Ltd.* v. *Union of India*, (2023) 25 GSTR-OL 181 : 2022 SCC OnLine Bom 648] , the Bombay High Court in somewhat similar circumstances where the show-cause notice had been kept in abeyance for more than seven to eleven years allowed the petition. The Bombay High Court also noticed that if the petitioner was informed about the show-cause notice being kept in the "call book", the petitioner would have applied for an appropriate relief by filing for appropriate proceedings. It was not expected for the assessee to preserve evidence and records for a long period of time. It is material to note that the Revenue had filed a special leave petition in *Union of India* v. *ATA Freight Line (I) (P) Ltd.* [*Union of India* v. *ATA Freight Line (I) (P) Ltd.* SLP(C) No. 003240 of 2023, dt. 10-2-2023] before the Supreme Court, which was dismissed by an order dated 10-2-2023. The said order reads as under:
>
> *"Delay condoned.*
>
> *Having heard learned counsel for the parties at length, we do not find any good ground to interfere with the impugned*

judgment and order passed by the High Court. Accordingly, the special leave petition is dismissed.

Pending application(s), if any, stand disposed of.""

82. In **ATA Freight Line (I) (P) Ltd. vs. Union of India**[35], the Bombay High Court had an occasion to examine the delay in completion of adjudication with matters being placed in the call book for 7 to 11 years without any intimation to the assessee. The Court had noted that the respondents had failed to notify the petitioner about the transfer or provide any updates, causing prejudice and hardship. It emphasized that such a delay was unreasonable, as the petitioner could have sought relief earlier if informed. The High Court made the following pertinent observations:

"**19.** It is an admitted position that respondent No. 2 did not fix any date of hearing of those show-cause notices or did not send any other communication to the petitioner informing as to why the said show-cause notices were not being heard. Respondent No. 2 informed the petitioner for the first time on April 12, 2021 that the show-cause notices were transferred to call book by invoking the circulars referred to and relied upon in the earlier paragraphs of the judgment.

20. The first letter was addressed by respondent No. 2 on 5th /7th June 2021 in response to the letter dated February 23, 2021 addressed by the petitioner seeking a copy of closure report, if any.

21. A perusal of the said reply from respondent No. 2 indicates that the only information provided to the petitioner was that files were transferred to call book as per the circulars issued by the Central Board of Excise and Customs which has been revised from time to time. A copy of the Circular dated April 26, 2016 was enclosed by respondent No. 2 along with the said letter for reference of the petitioner.

22. A perusal of the said Circular dated April 26, 2016 relied upon by respondent No. 2 indicates that by the said circular, respondent No. 1 clarified that the cases where (i) the issue involved has either been decided by the Supreme Court or the High Court and such order has attained finality or, (ii) Board has issued new instruction or circular clarifying the issue involved, subsequent to issue of the

[35] 2022 SCC OnLine 648

order to transfer the case to the call book would be taken out of call book and adjudicated. The said circular also provides for various eventualities where file can be transferred to call book already referred to in the earlier paragraph of this judgment.

23. Neither the affidavit-in-reply nor the arguments advanced by the learned counsel for the respondents indicated that the petitioner was at any point of time informed about the transfer of file relating to the show- cause notices in question to call book prior to the date of the petitioner's letter asking for closure report.

xxxx xxxx xxxx

26. This court in case of Bombay Dyeing and Manufacturing Company Limited v. Dy. Commissioner of CGST & CX (supra) after adverting to the judgment in cases of Parle International Ltd. v. Union of India (supra) and Reliance Industries Ltd. v. Union of India (supra) has held that when a show-cause notice is issued to a party, it is expected that the same would be taken to its logical conclusion within a reasonable period so that a finality is reached. If the respondent would have informed the petitioner about the said show-cause notice having been kept in call book in the year 2005 itself, the Petitioner would have immediately applied for appropriate reliefs by filing the appropriate proceedings. It is held that it is not expected from the assessee to preserve the evidence/record intact for such a long period to be produced at the time of hearing of the show-cause notice.

xxxx xxxx xxxx

29. In our view, since the respondents were totally responsible for gross delay in adjudicating the show-cause notices issued by the respondents causing prejudice and hardship to the petitioner and have transferred the show-cause notices to call book and kept in abeyance without communication to the petitioner for more than 7 to 11 years, the respondents cannot be allowed to raise alternate remedy at this stage. Be that as it may, no order has been passed by the respondents on the said show-cause notices. The question of filing any appeal by the petitioner therefore did not arise."

83. The respondents also appear to have clearly failed to even undertake a periodic review of pending proceedings or make even a feeble attempt to accord closure to proceedings that had been pending for decades. The Board, in its Instruction dated 18 November 2021 had duly underscored the requirement of the concerned authorities

intimating noticees' regarding the placement of their proceedings in the call book and undertaking a periodic reviews of the matters placed in abeyance. The said Instruction read as follows:

"**F.No. CBIC-90206/1/2021-CX-IV Section-CBEC**
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
****

Room No. 244 C. North Block,
New Delhi, dated: 18 November, 2021

INSTRUCTIONS

To
1. All Principal Chief/ Chief Commissioners of CGST, Central Excise and Service Tax;
2. All Principal Commissioners/ Commissioners of CGST, Central Excise and Service Tax;
3. The Director General of DGGI;

Madam/ Sir,

Subject: Audit para no. 5.1 to 5.18 of chapter V of Audit report no. 01 of 2021 on SCNs and adjudication process in CBIC - regarding.

Audit para no. 5.1 to 5.18 of chapter V of Audit report no. 01 of 2021 on Show Cause Notices and adjudication process in CBIC has made certain observations regarding issuance of SCNs and disposal of adjudication matters including call book cases.

2. Briefly, the Audit has pointed that

(i) Draft SCNs have been found pending for issuance.

(ii) There is inordinate delay in adjudication.

(iii) Adjudication orders have not been issued within stipulated period after completion of personal hearings.

(iv) Periodical review of call book cases has not been done.

(v) In certain cases, the records/files pertaining to adjudication have not been produced before Audit Party.

3. With the introduction of GST law, Board has consistently expressed its desire and resolve that it is of utmost importance to dispose the legacy matters related to Central Excise and Service Tax regime as expeditiously as possible. In this regard, Board has issued instructions from time to time regarding disposal of legacy issues such as issuance of Show cause notice, adjudication of SCNs, review of call book cases, etc.

4. However, in view of the observations of Audit, Board desires that the following directions must be strictly adhered to:

4.1 Once the investigation is over/analysis is done and draft show cause notice is prepared, SCN should be issued without any delay, without waiting for the last date of issuance of SCN.

4.2 Attention is invited to sub-section (11) of section 11A of Central Excise Act, 1944 read with sub-section (4B) of section 73 of the Finance Act, 1994 which stipulates that SCNs issued in normal cases should be adjudicated within six months in respect of Central Excise (CE) & Service Tax (ST), and SCNs issued involving extended period should be adjudicated within two years relating to CE and one year relating to ST where it is possible to do so. Board desires that the time limits mentioned in relevant Acts must be adhered to.

4.3 On the issue of delay in issuance of adjudication order within stipulated period of one month after final personal hearing has been conducted and non-recording of reason for the delay, reference is invited to para 14.10 of the Master circular No. 1053/02/2017-CX dated 10.03.2017 wherein, inter alia, it has been stated that:

> *"**14.10 Issue and Communication of order:** In all cases where personal hearing has been concluded, it is necessary to communicate the decision as expeditiously as possible but not later than one month in any case, barring in exceptional circumstances to be recorded in the file. The order is required to be communicated to the assessee in terms of provisions of Section 37C of the CEA, 1944."*

Audit has observed that in certain cases, adjudication orders have been issued beyond stipulated period and no justification has been recorded in the file explaining delay. It is, therefore, reiterated that timelines of completing adjudication process must be followed and in exceptional cases of delay beyond stipulated period, reasons for the delay must be recorded on file.

4.4 Audit in its report has also pointed incidences of periodical non- review of Call Book cases, non/delayed retrieval of SCNs from Call Book, incorrect transfer of SCNs to Call Book, resulting in irregular retention of cases in Call Book.

4.4.1 Kind attention is invited to Board's D.O letter F. No. 101/2/92- CX.3 dated 04.03.1992 wherein while indicating the categories of the cases to be transferred to call book, it was directed that a case should be transferred to call book only with the approval of Commissioner. Further, the Commissioners were instructed to review the Call book cases on monthly basis. These instructions have subsequently been reiterated vide Circular No. 385/18/98-CX, dated 30-3-1998 and Circular No. 719/35/2003-CX dated 28.05.2003. Audit has pointed out certain instances where Call book cases are not reviewed periodically, due to which, there are instances of delay in retrieval of Call book cases. It is therefore, reiterated that instructions in above mentioned D.O letter and subsequent instructions/circulars must be adhered to and Pr. Commissioners/Commissioners must review Call book cases on monthly basis. Non-adherence to these instructions shall be viewed seriously.

4.4.2 Audit has also pointed certain instances where noticees are not intimated about transfer of SCNs to Call book. Attention is invited to para 9.4 of the instructions issued vide Master circular No. 1053/02/2017-CX dated 10.03.2017 which reads as under:

> *"9.4 Intimation of Call Book cases to noticee: A formal communication should be issued to the noticee, where the case has been transferred to the call book."*

4.4.3 Therefore, it should be ensured that instructions issued vide Master circular No. 1053/02/2017-CX dated 10.03.2017 in this regard are adhered to.

4.4.4 Further, it has been pointed that in contravention to the Board's D.O letter dated 04.03.1992, there are instances where prior approval is not taken from the Commissioner before transferring the case to Call book. In this regard, the instructions issued by Board vide above mentioned D.O letter dated 04.03.1992 are reiterated. The cases must be transferred to call book only with the approval of Commissioner as stipulated earlier. A comprehensive one-time review of all cases may also be carried out in this regard and necessary action taken.

4.4.5 For proper handling of Call book cases, instructions have been issued by Board from time to time such as those mentioned in Circular No 1023/11/2016-CX dated 08.04.2016 and circular No. 1053/02/2017-CX dated 10.03.2017. Such instructions issued from time to time may be gone through and followed without fail.

4.5 Audit has also pointed out cases/instances where the case files/records pertaining to adjudication have not been produced before audit.

4.5.1 In Audit para 5.16 of Chapter-V of Audit report no. 01 of 2021 it has been stated that "Despite Board's Instructions vide DO letter F. No. 232/Misc DAPs/2018-CX-7 dated 26.04.2018 regarding cooperation with the C&AG during audit, by providing complete and comprehensive information, the department did not produce the complete records such as DSCN files, waiver of SCN files, SCNs pending for adjudication, adjudication cases, Call Book, transfer of records due to GST and List of total records."

4.5.2 In this regard it may be noted that vide aforesaid Chairman's D.O letter dated 26.04.2018, it was directed that full cooperation with the C&AG team would be provided by providing complete and comprehensive information available with the concerned Commissionerate. Any feeble excuses in this regard would not be entertained.

4.5.3 In this regard reference is invited to Circular dated 29.04.1988 issued from F.No. 240/15/88-CX.7 wherein it has been communicated that the files leading to passing of adjudication/appellate orders need not be made available to the audit parties of the Accountant General. It may be seen that the above-mentioned Circular was issued keeping in view the basic premise that audit parties cannot question the decision taken by the judicial or quasi-judicial authority. The said circular thus needs to be read in proper context that sharing of records with audit parties does not interfere with the judicial/quasi-judicial proceedings. The audit parties may require the production of the records for ensuring that due procedure is followed or otherwise. Therefore, the request of the Audit for production of records must be acceded to.

4.6 Attention is invited to the instructions issued by the Board vide Circular No. 716/32/2003-CX., dated 23-5 2003 wherein the Commissioners and Chief Commissioners have been directed to analyze the reasons for pendency of adjudication cases and strengthen the monitoring system. These instructions have also been reiterated from time to time. In this regard MPR DPM-ST-1A and DPM-CE-1A of the Monthly Progress Report (MPR) incorporate information relating to adjudication of pending cases and their disposal. Accordingly, Pr. Chief Commissioner/ Chief Commissioner &Pr. Commissioner/Commissioner must undertake periodic review of adjudication of pending cases.

5. Difficulty experienced, if any, in implementing the circular should be brought to the notice of the Board. Hindi version will follow.

(Varun Kumar Singh)
Under Secretary to Govt. of India
Tel No. 011-23095537"

84. In **Tata Steel Limited vs. Union of India & Ors.,**[36] the petitioner therein had challenged the revival of adjudication proceedings on a SCN issued in 1993 which had been kept in the call book for nearly 29 years. The Jharkhand High Court examined whether the conditions outlined in the Board's circulars for transferring a case to the call book were met and ultimately found that the respondents had failed to provide evidence of periodic review of cases as was required by those circulars. The High Court while criticizing the excessive delay and lack of communication to the petitioner regarding the SCN being placed in the call book, questioned the very legality of proceedings being kept pending for such long spells. Commenting adversely on such inaction, the High Court held:

> "8. The conditions stipulated by CBIC circular stipulate 4 contingencies under which an SCN can be transferred to the call book: (a) cases in which department has gone in appeal to the appropriate authority, (b) cases where injunction has been issued by Supreme Court / High Court/CEGAT etc.; (c) cases where audit objections are contested; (d) cases where the Board has specifically ordered the same to be kept pending and to be entered into the call book. It is submitted that the department has not gone in appeal against the order of the learned CEGAT and therefore the first condition is not fulfilled. So far as the conditions relating to grant of injunction mentioned under Clause B is concerned, there was no matter sub judice after the judgment of the Apex Court in Civil Appeal No. 3973 of 2001 dated 5th May 2004. The respondents in their counter affidavit have also not given any explanation as to why even after 2004 the proceedings were not revived for adjudication of the impugned SCN till December 2022. The instant case also does not relate to an audit objection or a direction of the Board to keep the SCN in a call book. It is further submitted that as per the CBIC circulars, the case can be referred to call book only after prior approval of Jurisdictional Commissioner. In the entire counter affidavit the respondents have not annexed or brought on record any document to show that necessary approval was taken from the Jurisdictional Commissioner. It is further pointed out from the CBIC

[36] W.P.(T) 308/2023 dated 14 February 2024

circulars issued from time to time such as Circular Nos. 385/18/98-CX dated 30th March 1998, 719/35/2003-CX dated 28th May 2003 and 1053/2/2017-CX dated 10th March 2017 that the competent authorities have been mandated to carry out periodic monthly review of SCNs kept in a call book. The respondents have not given a semblance of an answer as to whether any such periodical review was carried out by the competent authority. Referring to the Circular dated 10th March 2017, Clause 9.4 it is also submitted that whenever a case has been transferred to the call book a formal communication should be issued to the noticee. It is submitted that various courts have disapproved of such an approach to revive an adjudication proceedings after an inordinate delay in view of the conditions stipulated under Section 11 A (11) of the CEA. The expression 'if it is possible to do so' used in Section 11A(11) cannot by any stretch of imagination be extended for a period of 29 years to adjudicate upon such a show-cause notice. Any such stipulation in a statute, which does not prescribe an outer period of limitation can be understood as laying down only a reasonable period of limitation which cannot be extended to an infinite period such as in the present case. It is submitted that the records relating to the said period are not available in the office of the petitioner. The officers and employees who dealt with the matter have also left the company upon superannuation or otherwise. That is why various courts have castigated such an approach on the part of the excise authorities or the customs authorities under the relevant statutes in adjudicating show cause notices after inordinate delay of nine years or more in individual cases. Reliance is placed upon the decision of the Bombay High Court in the case of Eastern Agencies Aromatics Private Limited Vs. Union of India & Ors. Writ Petition (L) No. 30629 of 2022 [Bom (HC)] dated 24th November 2022; in the case of Harkaran Dass Vedpal Vs. Union of India, 2019 (368) E.L.T. 546 (P & H) and also a decision of a learned Single Bench of this Court in the case of Vijay Kumar Sinha Vs. Vinoba Bhave University through its Vice-Chancellor & Ors., 2020 SCC Online Jhar 861 which of course, does not relate to a tax matter. Learned counsel for the petitioner has also referred to the judgment of the Apex Court in Special Leave to Appeal (Civil) No. 12376 of 2022 passed in the case of Commissioner GST and Central Excise and Another Vrs. M/s. Shree Baba exports wherein such a view has been affirmed. Based on these submissions learned Senior Counsel for the petitioner has prayed that the impugned show cause notice be quashed. He has also referred to Rule 10 (3) of the Central Excise Rules 2002 which require an assessee to keep the relevant records up to a maximum period of five years. Rule 53(2) of the Central Excise Rules 1944 also contained a similar prescription of outer limit for maintaining the records. It is submitted that any adjudication on the impugned show cause notice dated 9 th December 1993 after 29 years at this

stage would be illegal and in contravention of the mandate of Section 11A(11) of the CEA 1944.

xxxx xxxx xxxx

16. Falling back upon the CBIC circular, it is contended that the competent authority i.e. the Commissioner, Central Excise has revived the proceedings and issued a notice of personal hearing to the petitioner since these SCNs/SODs were kept in call book on account of the matter pending before different courts including the Apex Court. However, on being specifically asked learned counsel for the respondent has not been able to dispute or indicate any explanation from the stand of the respondents as reflected in the counter affidavit as to whether there was any basis for keeping the SCN in call book after the decision rendered by the Apex Court on 5th May 2004 in Civil Appeal No. 3973 of 2001. There are no materials enclosed to the counter affidavit which also goes to show that the prior approval of the jurisdictional commissioner was taken before keeping the SCN into the call book. It is also not shown from the counter affidavit whether the petitioner was ever communicated of such a decision to keep the case in the call book all along and even after disposal of the Civil Appeal No. 3973 of 2001 vide judgment dated 5th May 2004. However, learned counsel for the respondent submits that the petitioner may be relegated to participate in the adjudication proceedings and if aggrieved, invoke the alternative remedy of appeal before the appellate authority i.e. learned CESTAT.

xxxx xxxx xxxx

18. The facts as borne out from the pleadings on record need no repetition. The impugned show cause is of 9th December 1993 (Annexure-5) issued upon the petitioner asking them to show cause as to why the appropriate excise duty amounting to Rs. 1,67,42,847.30 be not imposed upon him under the provisions of Rules 9(B), 52A, 173(B), 173(F) and 173(G) of Central Excise Rules, 1944 and Section 11A of the CEA, 1944 alleging less payment of duty due to misclassification. The respondents had kept the impugned show cause notice and ten other SCNs as indicated in the chart above in the call book on the ground that the matter was subjudice. However, from the pleadings on record and also from the averments made in the counter affidavit, it appears that none of the conditions as enumerated in the CBIC circular / guidelines relied upon by the respondents and also by the petitioner stood satisfied for transferring the matter to the call book. It is not a case where the department had gone in appeal before the learned CEGAT or before the Apex Court, rather it was the petitioner who twice went up to the Apex Court in Civil Appeal No. 782 of 1987 against the first SCN dated 8th February 1984 and in Civil Appeal No. 3973 of 2001

against the SCN dated 13th August 1990. The instant SCN pertains to the period June 1993 to November 1993 and is of 9th December 1993. Learned counsel for the respondents has fallen back on Clause 2 of the condition stipulated in the CBIC circular as referred to in para 11 of their counter affidavit but he has not been able to show that at any point of time there was a stay in proceeding upon the impugned show cause notice by either the CEGAT or the High Court or the Hon'ble Apex Court. Even if by stretching the argument to the extent that the show cause notice dated 13th August 1990 was subjudice before the Apex Court in Civil Appeal No. 3973 of 2001, there is no basis or explanation on the part of the respondents to have kept the show cause notice in its call book without proceeding for its adjudication after the judgment rendered in that case by the Apex Court on 5th May 2004. None of the other two conditions as indicated by the respondents at Clause 3 and 4 quoted above also stand satisfied in the present case. The respondents have not enclosed any document to show that prior approval of the Collector of excise was taken before keeping the case in the call book. There seems to be no reference of any periodic review of the call book, though the relevant CBIC circulars such as the circular dated 30th March 1998 and 20th May 2003 specifically required the Commissioners to review the cases transferred to call books on a monthly basis in circumstances where the department was confronted with a situation where provisional assessment cases were kept pending for several years. The extract of the relevant circulars are quoted here under:-

In circular dated 30th March 1998 :

> *"While the Board had issued instructions to Commissioners to review the cases transferred to call books on a monthly basis, it is observed that no such review is actually being done. (Board's DO Letter F.No.101/2/92-CX.3, dated 4th March 1992 and Board's Circular No.53/90-CX.3, dated 6.9.1990). 2. The Board vide its < > specified the following categories of cases which can be transferred to call book viz.:*
>
> *1. Cases in which the Department has gone in appeal to the appropriate authority.*
>
> *2. Cases where injection has been issued by Supreme Court/High Court/CEGAT, etc.*
>
> *3. Cases where audit objections are contested. 4. Cases where the Board has specifically ordered the same to be kept pending and to be entered into the call book."*

In circular dated 28th May 2003 :

> *"3. It is further directed that a one-time comprehensive review of all the pending call book cases will be done by respective CCEs. The Chief Commissioner may monitor*

such review periodically in their respective zones. The progress report of the call book cases should continue to mention in the MTR as well as in the monthly statements of the progress achieved in "Key Result Areas".

In circular dated 10th March 2017 :

"9.4 Intimation of Call Book cases to notice: A formal communication should be issued to the notice, where the case has been transferred to the call book.""

IX. SUMMATION

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 assessees' 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.

X. OPERATIVE DIRECTIONS

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

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

DECEMBER 10, 2024/kk/DR

Appendix-A

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]
1.	City Paper v. Union of India and Ors. WP(C) 16163/2023	22.12.2006	Pending	• Impugned SCN was transferred 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. • 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.	Personal Hearings in the matter for the Petitioner were held on the following dates: 1. 17.04.2012 2. 13.10.2014 3. 02.12.2020 4. 11.08.2023 It is matter of record that the Petitioner repeatedly requested for RUDs which led to substantial delay in the personal hearings being held.	• 20.11.2023 – the Petitioner sought 8 weeks' time to file reply. • It is matter of record that the Petitioner repeatedly requested for RUDs despite such RUDs having been supplied to them – Ref. ***Annexure A-6 at p. 33*** of the Counter Affidavit. • The repeated demands for RUDs, which contributed substantially to the delay in the adjudication of the SCN, have been	Pre

				• Impugned SCN was taken out from the call book on 03.05.2019 in view of the Office Memorandum issued vide F.No. 437/143/2009-Cus.IV dated 03.05.2019. • 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.		elaborated in the list of dates encapsulated in the Counter Affidavit at ***pp. 2-10.***	
2.	Ashish Jain and Ors v. ADG, DRI and Anr. WP(C) 12425/2023	20.12.2012	Pending	1. All RUDs were given to all Noticees alongwith SCN in the form of CD. Moreover, vide letter DRI F.No 23/13/2011-DZU dated 31.01.2013, Petitioners were informed by DRI that they had already been supplied RUDs in CD alongwith SCN, but they were again intimated that they may collect another set of RUDs from DRI office on any working day between 2pm-3pm 2. Vide CBEC order dated 31.01.2013, the SCN had been assigned to the Commissioner of Customs, ICD-Tughlakabad, New Delhi for the purposes of adjudication. The same was brought to the knowledge of the Commissioner of Customs, ICD-Tughlakabad vide DRI letter F.No. 23/13/2011-DZU dated 11.02.2013.			Pre

				3. ADG (Adj) DRI, New Delhi was appointed as common adjudication authority vide Notification No.08/2016-Customs (MT) dated 12.01.2016 4. Vide C.No VIII/ICD/6/TKD/Exp/Adj/CAA/08/2015/Pt dated 14.06.2016, the Commissioner of Customs. ICD Tughlakabad informed the ADG (Adjudication), DRI regarding transfer of Adjudication files pursuant to him being appointed as Common Adjudicating Authority. 5. 21.07.2016 - Case was transferred to the call book subsequent to the decision of Hon'ble High Court of Delhi in M/s Mangli Impex vide order dated 03.05.2016 and DGRI letter DRI/HQRS/24-C/ADJN/03-2016 dated 14.07.2016. 6. 30.01.2017 - Case was retrieved from the call book with reference to Board's letter DOF No. 437/143/2009-CUS IV (Part II) dated 06.01.2017. 7. 01.03.2017- Personal hearing was given to the Noticees. 8. Noticees demanded RUDs and adjournments for personal hearing, SIO(Adj.), The SIO vide their letter of even no 2453 dated 23.05.2017 informed the SIO (Adj.), DRI that RUDs had already been supplied in the form of CD along with SCN and party was also informed vide letter of even no. dated 31.01.2013 to collect another set of RUD 9. This matter was taken up with DRI headquarters on 11.12.2017 and 07.08.2018 to transfer the case in call book with various decisions of Hon'ble courts giving different decisions. The case was not further taken up for adjudication. 10. 2020-21:- Lockdown in the country due to COVID Pandemic 11. On 03.06.2021, the case was transferred to call book. 12. Personal hearing was given to notices on 12.07.2023 and 19.07.2023 13. Next personal hearing was given on 23.08.2023 14. Next personal hearing was given on 19.10.2023	

3.	Echo International and Ors. v. Principal Commissioner of Customs Import and Anr. WP(C) 3705/2024	25.02.2009	23.01.2024	Placed in call book on 29.06.2016, taken out from call book on 03.01.2017, placed in call book on 3.11.2017, taken out from call book on 03.05.2019, placed in call book on 17.03.2021, taken out from call book on 01.04.2022	22.11.2012, 4.12.2012, 11.10.2013, 13/14.11.2013, 19.12.2013 AND 22.08.2023	-	Pre
4.	Dolphin Printers and Anr. v. Principal Commissioner of Customs Import and Anr. WP(C) 3737/2024	25.02.2009	23.01.2024	Placed in call book on 29.06.2016, taken out from call book on 03.01.2017, placed in call book on 3.11.2017, taken out from call book on 03.05.2019, placed in call book on 17.03.2021, taken out from call book on 01.04.2022	22.11.2012, 4.12.2012, 11.10.2013, 13/14.11.2013, 19.12.2013 AND 22.08.2023	-	Pre
5.	Bhambri Printing Press and Ors. v. Principal Commissioner of Customs	25.02.2009	23.01.2024	Placed in call book on 29.06.2016, taken out from call book on 03.01.2017, placed in call book on 3.11.2017, taken out from call book on 03.05.2019, placed in call book on 17.03.2021, taken out from call book on 01.04.2022	22.11.2012, 4.12.2012, 11.10.2013, 13/14.11.2013, 19.12.2013 AND 22.08.2023		Pre

	Import and Anr. WP(C) 3753/2024						
6.	Rhea International and Anr. v. Principal Commissioner of Customs Import and Anr. WP(C) 3755/2024	25.02.2009	23.01.2024	**Personal Hearing Date**		**Reply of the Noticees and Department's Correspondence**	Pre
						26.05.2009 - Letter sent to R-2 requesting to write to CBIC to appoint Common Adjudicating Authority 22.3.2010 - R-1 appointed as Common Adjudicating Authority.	
				23.09.2010 & 26.10.2010		Advocate submitted letter dated 21.09.2010 and requested to adjourn the personal hearing, Peitioners appeared on 26.10.2010 for personal hearing and requested for cross examination of Chartered Engineer.	
				24.09.2012		On 24.09.2012, DRI (DZU) informed that copies of relied upon documents have been supplied to all noticees.	
				22.11.2012		Advocate of co-Noticees requested for adjournment.	
				17.12.2012		Advocate of co-Noticees stated that Final Reply will be submitted after receipt of valuation reports and	

						completion of cross examination of the Chartered Engineer. Copies of valuation reports were sent on 20.12.2012 to co-Noticees. Some co-noticees again asked for RUDs and some asked for more time to file Reply	
						Petitioner requested for examination of original overseas enquiries made by the DRI.	
				11.10.2013	Personal Hearing took place.		
				13.11.2013 & 14.11.2013 19.12.2013 29.06.2016 3.1.2017		Advocate reiterated demand of original overseas enquiry Adv appeared before the adjudicating authority and DRI official appeared along with required documents. SCN was transferred to call book in light of Delhi High Courts' Judgement in Mangli Impex. Board's Instruction issued vide F No. 276/104/2016-CX.8A(Pt.) dated 03.01.2017.	
				3.11.2017	(Transfer to Call Book)	Board's Instruction issued vide F No. 437/143/2009-Cus.IV dated 03.11.2017	

				1.5.2019	(Taken out of Call Book)	Office Memorandum issued vide F No. 437/143/2009-Cus.IV dated 03.05.2019	
				2020-21		Lockdown in the country due to COVID Pandemic	
				17.03.2021	(Transfer to Call Book)	In light of judgement of Hon'ble Supreme Court in M/s Cannon India Pvt. Ltd and the Board's Instruction No. 04/2021-Customs dated 17.03.2021.	
				25.07.2023	(Taken out of Call Book)	in view of the validation in Section 97 of the Finance Act, 2022. PH was also given on 22.8.2023 to all the Noticees.	
				22.08.2023		Co-noticees again asked for documents	
7.	Acry Monomers India Pvt. Ltd. & Ors. v. ADG, DRI and Anr. WP(C) 13509/2023	30.09.2008	Pending **However, the Petitioner cannot object to delay in adjudication as he himself has asked to keep the matter in abeyance a number of times, such as on 02.06.2014 and 02.06.2017**	1. 17.03.2010 - Hearing scheduled by Commissioner of Customs (Import), Nhava Sheva, but the Petitioners stated that some documents had not been received, even though this was false. 2. Despite this, in the spirit of natural justice, DRI again sent soft copy as well as hard copy of the RUDs by even No 5134 dated 18.12.2012 as well as by letter dated 29.04.2014 3. 18.02.2011 - The Hon'ble Supreme Court in Commissioner of Customs vs Sayed Ali [2011 (265) ELT 17] held that DRI officers to not be proper officers for issuing the demand notice. However, Customs Act was amended by the Legislature and various Notifications/Circulars, like CBIC Circular 44/2011-Cus dated 23.09.2011 and CBIC Notification No 40/2012-Cus (N.T) dated 02.05.2012 assigning various officers of Customs, including the DRI, the functions of the "Proper Officers" as mentioned in the Customs Act. 4. Scheduled for hearing in June 2014, but Petitioners again asked for RUDs to cause deliberately delay.		Pre

				5. Petitioner requested the Adjudicating Authority to keep the Show Cause Notice in abeyance till they receive the co-relation chart even though it was never a part of RUDs as a delaying tactic. 6. By letter dated 02.06.2014, Petitioner himself has requested to keep the matter in abeyance 7. Respondent No 2 was appointed as the common adjudicating authority by CBIC Notification No 81/2016-Customs(N.T) dated 06.06.2016. 8. After the judgement of the Hon'ble Delhi High Court in WP(C) 441/2013 in the matter of M/s Mangli Impex Ltd, SCN was transferred to call book w.e.f 29.06.2016 and taken out from the call book- CBICs Instruction vide F No. 276/104/2016-CX.8A(Pt.) dated 03.01.2017. 9. Personal Hearing letter to all the noticees was issued on 02.06.2017. Petitioner requested to keep the SCN in abeyance in view of M/s Mangli Impex Ltd. 10. Personal Hearing on 29.06.2017-Petitioner wanted to wait for co-relation chart (not part of RUDs) 11. 03.11.2017- transferred to call book. 12. 03.05.2019 - taken out of call book. 13. Personal Hearing Letters dated 09.09.2019- Petitioners sought two months' time to submit reply. 14. Personal Hearing Letters dated 27.09.2019 was issued to all notices. 15. Personal hearing held on 19.12.2019, wherein the petitioner asked for various documents. 16. In 2020-21, there was lockdown in the country in view of the COVID Pandemic.	

				17. After the Hon'ble Supreme Courts order in Canon India Pvt Ltd vs Commissioner of Customs 2021(376) ELT 3, the SCN was transferred to call book w.e.f 17.03.2021 and taken out from the call book in light of CBIC Circular No. 07/2022-Customs dated 31.03.2022 18. Issued letter on 13.07.2023 for Personal Hearing to be held on 11.08.2023. However, on 04.08.2023- the Petitioner once again said that all documents are not available with them. ***In view of the above, it is apparent that Respondents have always been trying to complete the adjudication process, but it is the Petitioners who deliberately and intentionally procrastinated the adjudication process by repeating the same thing that they have not received all the RUDs and Co-relation chart, whereas the RUDs were received by them back in 2008, and acknowledged the same when again forwarded by DRI. This is done simply to take the defence of principal natural justice***		
8.	Harsh Packaging and Anr. v. Principal Commissioner of Customs Import and Anr. WP(C) 3865/2024	25.02.2009	23.01.2024	• Impugned SCN was transferred 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. • 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	Personal Hearings in the matter for the Petitioner were held on the following dates: 1. 23.09.2010 2. 17.12.2012 3. 14.11.2013 4. 19.12.2013 5. 22.08.2023	-	Pre

				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. 437/143/2009-Cus.IV dated 03.05.2019. • 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.			
9.	Chaman Lal Bhambri v. Principal Commissioner of Customs Import and Anr.	Same as WP(C) 3755/2024.					

	WP(C) 3866/2024	
10.	Chaman Lal Bhambri Harsh Packaging v. Principal Commissioner of Customs Import and Anr. WP(C) 3867/2024	Same as WP(C) 3755/2024.
11.	Chaman Lal Bhambri v. Principal Commissioner of Customs Import and Anr. WP(C) 3868/2024	Same as WP(C) 3755/2024.
12.	Chaman Lal Bhambri Maruti Graphics v. Principal Commission	Same as WP(C) 3755/2024.

	er of Customs Import and Anr. WP(C) 3872/2024	
13.	Chaman Lal Bhambri (M/s U.S. Enterprises) v. Principal Commissioner of Customs Import and Anr. WP(C) 3875/2024	Same as WP(C) 3755/2024.
14.	Chaman Lal Bhambri Maleshwari Printing Press v. Principal Commissioner of Customs Import and Anr.	Same as WP(C) 3755/2024.

	WP(C) 3877/2024						
15.	Rajvani Graphics Trade and Anr. v. Principal Commissioner of Customs Import and Anr. WP(C) 3881/2024	25.02.2009	23.01.2024	• Impugned SCN was transferred 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. • 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. 437/143/2009-Cus.IV dated 03.05.2019. • Impugned SCN was transferred to the call book on 17.03.2021 in light of the ruling of the Supreme Court in	Personal Hearings in the matter for the Petitioner were held on the following dates: 1. 23.09.2010 2. 17.12.2012 3. 14.11.2013 4. 19.12.2013 5. 22.08.2023	-	Pre

				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.			
16.	Chaman Lal Bhambri v. Principal Commissioner of Customs Import and Anr. WP(C) 3885/2024	Same as WP(C) 3755/2024.					
17.	Chaman Lal Bhambri Rajvani Graphics Trade v. Principal Commissioner of Customs Import and Anr.	Same as WP(C) 3755/2024.					

	WP(C) 3933/2024						
18.	Chaman Lal Bhambri Man Bhavan Arts v. Principal Commissioner of Customs Import and Anr. WP(C) 3934/2024	Same as WP(C) 3755/2024.					
19.	Chaman Lal Bhambri Magnum Graphics v. Principal Commissioner of Customs Import and Anr. WP(C) 3935/2024	Same as WP(C) 3755/2024.					
20.	M/s VOS Technologies India Private Ltd. v. The	SCN-29.11.2019	Pending	SCN transferred to Call book on 01.04.2021 - The Adjudicating Authority vide letter dated 01.04.2021 referring to Instruction	• 15.09.2020 - Mr Ashok Pratap Singh, Advocate, appeared and certain issues were	-	Post

	Principal Additional Director General and Anr. WP(C) 4831/2021	Supplementary SCN-20.04.2020 Supplementary SCN-18.09.2020		No.4/2021-Cus dated 17.03.2021 issued by the Board informed the Petitioners that the impugned show cause notice is being transferred to the Call Book under the provisions of Section 28(9A)(c) of the Customs Act,1962.	raised , recorded (Annexure P/3 of W.P.) • 07.04.2020- The Adjudicating Authority vide letter dated 28.02.2020 fixed the date of personal hearing for 07.04.2020. • 29.07.2020- The Adjudicating Authority vide letter dated 07.07.2020 fixed the date of personal hearing for 29.07.2020. • 15.09.2020-The Adjudicating Authority vide letter dated 17.08.2020 fixed the date of personal hearing for 15.09.2020.		Vide order dated 23.09.2021 in Suo-Moto Writ Petition No. 03/2020, the Hon'ble Supreme Court was pleased to exclude the period from 15.03.2020 till 15.03.2022 for the purpose of limitation.
21.	M/s Amyra Technica Private Limited v. The Principal Additional Director	Same as M/s VOS Technologies India Private Ltd. v. Principal Additional Director General and Anr. [WP(C) 4831/2021] – S. No. 20.					

	General and Anr. WP(C) 4832/2021					
22.	M/s R. Anil Kumar and Anr. v. ADG, DRI and Anr. WP(C) 15202/2023	02.09.2013	Order not yet passed	Initial call book date not available • Taken out of Call Book on 16.01.2017 • Transferred to call book vide Order dated 30.05.2017 in W. P. (C)5016/2017 • Taken out of call book in November, 2019 on instructions of Chief Comm. Of Customs (Delhi Zone) • Thereafter delay due to COVID-19 pandemic • Placed in call book as per CBIC Instruction No 04/2021-Customs in July, 2021 • Finally, taken out in July, 2022	• 24.05.2017: Petitioner cited the judgment of the Hon'ble High Court in the matter of M/s Mangli lmpex Ltd in order to keep the adjudication in abeyance. • 23.12.2020: The counsel of the Petitioners appeared for Personal Hearing on 23.12.2020. However, even until then, no reply had been submitted on behalf of the Petitioner. • 19.01.2021: Further time was sought to file a reply. • 10.02.2021: Counsel for the Petitioner submitted an interim reply to the SCN and insisted on cross-examination of one Mr. Madhusudan Satyanarayan, who had passed away on 30.11.2017. • 25.02.2021: Counsel for the Petitioner submitted an interim reply to the SCN and insisted on cross-examination of one Mr. Madhusudan Satyanarayan, who had passed away on 30.11 .2017. • 05.08.2022: No appearance • 12.08.2022: No appearance.	Pre
23.	Laxmi Sales Corporation v. The Principal Additional Director General and Anr.	Same as M/s VOS Technologies India Private Ltd. v. Principal Additional Director General and Anr. [WP(C) 4831/2021] – S. No. 20.				

	WP(C) 6193/2023						
24.	M/s Mohit International through Prop. Harsh Anil Kumar Vasant v. Commissioner of Customs Air Cargo Complex (Exports) and Ors. WP(C) 3147/2023	20.12.2013	Pending	• Transferred to the Call Book in the light of the **Board's Instruction issued vide F No. 276/104/2016-CX.8A(Pt.) dated 29.06.2016 & 28.12.2016.** • **Impugned SCN was transferred to the call book w.e.f 29.06.2016.** • **Impugned SCN was taken out from the call book in light of the Board's Instruction issued vide F No. 276/104/2016-CX.8A(Pt.) dated 03.01.2017.** • Reference is invited to the **office Memorandum issued vide F No. 437/143/2009-Cus.IV dated May 2019** regarding "*Adjudication/appeals arising out of Mangli Impex-taking out such cases from Call Book for adjudication*", wherein reference was made to the **OM of even number dated 05.01.2018** that pursuant to various judgements of Delhi High Court, there seems no	• 16.12.2022 • 02.03.2023 • 03.03.2023 • 09.03.2023	• 21.08.2014 - Advocate on behalf of M/s Mohit International vide letter dated 21.08.2014 submitted that they have not received RUD-4 and in absence of which they can't file reply and requested to adjourn the hearing for one month. • 04.12.2014-Advocate on behalf of M/s Mohit International vide letter dated 16.12.2014 submitted that they have not received RUD-4 in the absence of which they can't file reply and requested to adjourn the hearing for one month and that they received the PH letter after 04.12.2014. • 22.05.2015- Advocate on behalf of M/s Mohit International	Pre

				legal bar to take up the adjudication in pending cases. • **Impugned SCN was again transferred to call book w.e.f., 03.11.2017 in light of the Board's Instruction issued vide F No. 437/143/2009-Cus.IV dated 03.11.2017.** • File was received back in the ICD TKD Import Commissionerate and subsequently transferred to ACC Export Commissionerate in compliance of the Order No. 01/2018 dated 15.11.2018 for the purpose of adjudication.		vide letter dated 21.08.2014 submitted that they have not received RUD-4 in the absence of which they can't file reply and requested to adjourn the hearing for one month.	
25.	Sheel Narain Gupta v. Commissioner of Customs Adjudication and Ors. WP(C) 10289/2023	25.03.2008	30.05.2023	-	• 15.12.2011 • 03.12.2014 • 10.03.2017 • 18.04.2023	• 15.12.2011: Personal hearing granted, but adjournment sought on behalf of another Noticee (Naresh Uppal) on account of marriage of his daughter. • Request made for hearing on 12 January, 2012, but no notice received. • 03.12.2014 - Notice for personal hearing received, but adjournment sought	Pre

							on behalf of advocate of noticee, Naresh Uppal on account of marriage of his (advocate's) daughter. No notice received till 2017.	
26.	Navshakti Industries Pvt. Ltd. and Anr. v. Union of India and Ors. WP(C) 15971/2023	23.12.2006	Pending		**Personal Hearing and other relevant events**		**Reply of Noticees and Department Correspondences**	Pre
					24.12.2006		SCN dated 23.12.2006 alongwith RUDs despatched by DRI to all the Noticees.	
				1.	10.09.2007 20.09.2007		Letter dated 10.09.2007 issued to all Noticees to submit reply in two weeks' time and to approach the Assistant Director, DRI to collect the RUDs if not received so far. <u>Petitioner stated that since the matter of providing the non-RUDs is subjudice, adjudication proceedings may not be concluded in haste.</u>		
				2.	16.06.2009		Petitioner vide letter dated 23.06.2009 submitted the list of documents which have not been supplied by DRI.	
				3	**10.09.2009-PH**		None appeared in the PH.	
				4	**08.10.2009-PH**		Petitioner requested to supply documents and requested for Cross-examination of the DRI officials.	
				5	**23.12.2009**		Petitioner reiterated their earlier submissions.	
				6	**18.02.2011**		Hon'ble Supreme Court in Commissioner of Customs vs Sayed Ali 2011 (265) ELT 17 held DRI officers to not be proper officers for issuing the demand notice. However, Customs Act was amended by the Legislature.	
				6	**10.04.2012-PH**		Petitioner again requested for documents.	
				7	**27.04.2012-PH**		Petitioner told that they have not received 18 documents.	
				8	**13.01.2014-PH**		Petitioner told that they have not received 18 documents.	
				9	**29.06.2016 (Transferred to Call Book)**		**<u>Due to the judgement of the Hon'ble Delhi High Court in WP(C) 441/2013 in the matter of M/s Mangli Impex Ltd.</u>**	

				10	**03.01.2017 (Taken out of Call Book)**	**Board's Instruction issued vide F No. 276/104/2016-CX.8A(Pt.) dated 03.01.2017.**	
				11	**06.06.2017-PH**	Petitioner asked for documents and cross-examination	
				12	**03.11.2017 (Transferred to Call Book)**	**Board's Instruction issued vide F No. 437/143/2009-Cus.IV dated 03.11.2017.**	
				13	**03.05.2019 (Taken out of Call Book)**	**Office Memorandum issued vide F No. 437/143/2009-Cus.IV dated 03.05.2019.**	
				14	**25.03.2020-PH**	**None appeared in the PH.**	
				15	**09.08.2020/10.08.2020-PH**	**None appeared in the PH.**	
				16	**23/09/220 &24/09/2020**	Petitioner requested for documents	
				17	**19.11.2020-Virtual PH**	None appeared in the PH.	
				18	**15.12.2020/17.12.2020-Virtual PH**	An e-mail dated 18.12.2020 was received from Petitioner asking documents	
				19	**17.03.2021 [Letter dated 08.04.2021 issued to all Noticees (Call Book)]**	**It was informed to all the noticees that the impugned SCNs have been transferred to Call Book** due to Hon'ble Supreme Courts' Judgement in Canon India Pvt Ltd vs Commissioner of Customs 2021(376) ELT 3.	
				20	**31.03.2022**	**Taken out of call Book in light of the book in light of the Section 97 of the Finance Act, 2022 and CBIC Circular No. 07/2022-Customs dated 31.03.2022.**	
				21	**23.08.2023-PH**	Petitioner requested for documents	
				22	**26.12.2023-PH**	A PH letter dated 11.12.2023 was issued to all the noticees wherein it was also informed that soft copies of RUDs can be collected before the date of hearing i.e. 26.12.2023 in the working hours. ***In view of the above, it is apparent that Respondents have always been trying to complete the adjudication process, but it is the Petitioners who deliberately and intentionally procrastinated the adjudication process by repeating the same thing that they have not received all documents to***	

					invoke the defence of principal of natural justice, whereas the RUDs were received by them long time back.		
27.	M/s Sunny Sales v. Commissioner of Customs (Adjudication) Delhi and Anr. WP(C) 16126/2023	12.03.2015	Pending	• Transferred to the Call-Book on 21.07.2016 pursuant to the judgement in Mangali Impex • Thereafter, taken out again on 27.01.2017 • Again, transferred to the Call-Book on 03.06.2021 in light of the pendency of the Review Petition in Mangali Impex before the Hon'ble Supreme Court, • Taken out of the Call-Book in July, 2023	• **20.02.2017**: Vide their letter dt. 18.02.2017, Shri Sanjay Mehta, Partner of the Petitioner firm requested for postponing the Personal Hearing fixed on 20.02.2017 and supply of unfiltered D.O.V. data for the period 2010-2014. • **12.07.2023 and 19.07.2023:** Legislative changes to validate SCN's issued by officers of DRI were introduced vide Finance Act, 2022. Thereafter, personal hearing was given to the noticees on 12.07.2023 and 19.07.2023. • **01.11.2023:** The Superintendent (ADJ) issued notice for Personal Hearing vide letter dt. 01.11.2023 and personal hearing was fixed on 16.11.2023 in respect of M/s Sunny International and others. • **10.11.2023:** Shri Harshad Mehta, Proprietor of M/s Sunny International vide their letter dated 10.11.2023 (received on 15.11.2023) requested for some documents and an adjournment of the hearing fixed on 16.11.2023. • **14.11.2023:** Shri Harshad Mehta, Proprietor of M/s Sunny International sent a reply vide email letter dt. 14.11.2023, wherein he requested to provide the notification of appointment of Commissioner of Customs, Adjudication as Commissioner of Customs, Kolkata.		Pre
28.	SuperTech Engineers v. Commissioner of Central Tax Delhi	20.04.2012 and 16.10.2012	28.03.2024	• Not placed in the Call Book.	• 25.04.2018 • 24.01.2024	Opportunity of personal hearing was granted on 16.08.2021. However, the Petitioner through its authorized representative	N/A – SCN issued under Finance Act, 1994

	West and Anr. WP(C) 6146/2024					intimated on 16.08.2021 that they are unable to attend the PH due to some personal difficulties and requested for another date. He also requested that one more case being SCN dated 26.10.2018 may also be taken up for personal hearing on the next date of hearing. Certain other relevant details are as follows: • Subsequent to the cadre restructuring in CBIC held in 2014, the above mentioned SCN was assigned to the Commissioner of Central Excise Gurgaon-I for adjudication purpose vide Order No.03/2014 dated 28.11.2014 issued by the Director (Service Tax), CBEC. • The CBIC, vide Circular No. 1049/37/2016-CX dated September 29, 2016, enhanced the monetary limits of	

						adjudication in the competency of Additional Commissioner from up to 50 Lakhs to up to 2 Crores. Hence, the adjudicating authority of the case was changed from Commissioner to Additional Commissioner. • Vide Order No. 10/2016-17 dated 21.02.2017 issued by the Chief Commissioner of Service Tax, New Delhi, the above mentioned SCN was assigned to the Service Tax Delhi-II Commissionerate for adjudication purpose. • Vide letter C. No. IV(16)Hqrs./Adj/Supertech/453/ST/12 dated 09.01.2018 issued by the CGST Delhi South Commissionerate, file in respect of the subject SCN was transferred to CGST Delhi North Commissionerate on the	

						ground that the files pertained to CGST Delhi North Commissionerate. • The case file of subject SCN was received in CGST West Commissionerate on 15.02.2018 for adjudication. • The Respondent respectfully submits that with the introduction of Central Goods and Services Tax Act, 2017 and rise in issues arising there from, including the need to conduct physical verification of various Registrants to avoid and prevent fraudulent activities and misuse of the new tax regime, it had become difficult to make prompt adjudication. • It is in these circumstances that a fresh date for personal hearing, in respect of all 5 clubbed SCNs was	

						fixed on 24.01.2024 vide letter C. No. DL/GST/West/Hqrs./Adjn/ADC/134/2022-23 dated 18.01.2024. • Sh. S. S. Dabas, Advocate, on behalf of party, attended the personal hearing on 24.01.2024 and submitted its reply, inter-alia raising the issue of limitation in adjudication of the show cause notice. The last reply to one of the 5 (five) SCNs i.e. SCN No. 195/Div-1/2014- 15 dated 23.05.2014 was filed by the party on 14.03.2024. • All the above mentioned 5 SCNs (including SCN No. 13/Audit/2012-13 dated 20.04.2012 & 164/Div-I/2012-13 dated 16.10.2012) have been adjudicated vide Order-in- Original dated 28.03.2024. passed by the Additional Commissioner, CGST	

						Delhi West Commissionerate. • **<u>The final reply to the SCNs was filed by the party on 14.03.2024 and the department has adjudicated all the 5 (Five) SCNs on 28.03.2024 i.e. within two weeks after receiving the final reply</u>**.	
29.	Navshakti Industries Pvt. Ltd. and Anr. v. Union of India and Ors. WP(C) 16193/2023	22.12.2006	Pending	• Impugned SCN was transferred 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. • 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.	Personal Hearings in the matter for the Petitioner were held on the following dates: 1. 17.04.2012 2. 30.09.2014 3. 13.10.2014 4. 02.12.2020 5. 11.08.2023	• 20.11.2023 – the Petitioner sought 8 weeks' time to file reply. • 15.12.2023: The matter was stayed by this Hon'ble Court. • It is matter of record that the Petitioner repeatedly requested for RUDs despite such RUDs having been supplied to them – Ref. to ***Annexure R-11 at p. 78*** of the Counter Affidavit. • The repeated demands for RUDs, which	Pre

				• Impugned SCN was taken out from the call book on 03.05.2019 in view of the Office Memorandum issued vide F.No. 437/143/2009-Cus.IV dated 03.05.2019. • 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.		contributed substantially to the delay in the adjudication of the SCN, has been elaborated in the list of dates encapsulated in the Counter Affidavit at ***pp. 2-13.*** • It is also a matter of record that from 2008-2011, there was ongoing litigation with respect to the Petitioner which has been elaborated in the list of dates encapsulated in the Counter Affidavit at ***pp. 3-5***.	
30.	M/s Kasturi International Pvt. Ltd. and Ors. v. Principal Commissioner of Customs Import and Anr.	23.12.2006	08.02.2024	• Board Lr. Dated 17.03.2021 (Annexure-2 to the reply) • Communication dated 06.04.2021 (Annexure-3 to the Reply)	There were 68 Noticees. PHs on: 13.10.2008 14.04.2012 14.05.2012 15.05.2012 16.05.2013 17.05.2013 20.05.2013 22.05.2013 24.05.2013	• Noticees regularly sought adjournment in the name of non-submission of RUDs or Non-RUDs. • Did not appear on many personal Hearing Dates.	Pre

	WP(C) 5896/2024				23.08.2013 26.08.2013 27.08.2013 29.08.2013 03.10.2013 04.10.2013 29.08.2013 03.10.2013 04.10.2013 07.10.2013 12.11.2013 20.12.2013 08.01.2014 09.01.2014 15.01.2014 10.10.2014 13.10.2014 14.10.2014 22.08.2016 23.08.2016 24.08.2016 30.08.2016 02.09.2016 06.09.2016 08.09.2016 13.09.2016 14.10.2016 15.09.2016 16.09.2016 17.09.2016 19.09.2016 20.10.2016 25.10.2016 16.11.2016 17.11.2016		

					18.11.2016 21.11.2016 22.11.2016 23.11.2016 24.11.2016 25.11.2016 28.11.2016 29.11.2016 30.11.2016 01.12.2016 02.12.2016 05.12.2016 09.01.2017 11.01.2017 18.01.2017 19.01.2017 27.11.2018 28.11.2018 29.11.2018 03.12.2018 26.12.2018 27.12.2018 21.08.2019 22.08.2019 27.08.2019 28.08.2019 21.01.2020 22.01.2020 23.01.2020 18.02.2020 19.02.2020 20.02.2020 25.02.2020 13.10.2020 14.10.2020		

					15.10.2020 24.08.2023 22.12.2023 ***(Pages 4-17 of reply)***		
31.	SuperTech Engineers v. Commissioner of Central Tax Delhi West and Anr. WP (C) 6147/2024	26.10.2018	28.03.2024	Not placed in the Call Book.	24.01.2024	• The Respondent respectfully submits that subsequent to the enactment of the Central Goods and Services Tax Act, 2017 and the attendant increase in associated challenges, including the necessity for conducting physical verification of numerous registrants to pre-empt fraudulent activities and misuse of the new tax framework, timely adjudication had proven to be challenging. This situation persisted in subsequent years, as evidenced by numerous instances of fraudulent practices such as bogus registrations, issuance of counterfeit invoices, and fraudulent refund	N/A – SCN issued under Finance Act, 1994

						claims detected by the department. In light of these circumstances, the expeditious adjudication of matters has encountered obstacles. • It is in these circumstances that a fresh date for personal hearing, in respect of all 5 SCNs was fixed on 24.01.2024 vide letter C. No. DL/GST/West/Hqrs./Adjn/ADC/134/2022-23 dated 18.01.2024. • Sh. S. S. Dabas, Advocate, on behalf of party, attended the personal hearing on 24.01.2024 and submitted its reply, inter-alia raising the issue of limitation in adjudication of the show cause notice. The last reply to one of the 5 (five) SCNs i.e. SCN No. 195/Div-1/2014- 15 dated	

						23.05.2014 was filed by the party on 14.03.2024. • All the 5 SCNs (including SCN No. 18/2018 dated 26.10.2018) have been adjudicated vide Order-in-Original dated 28.03.2024 passed by the Additional Commissioner, CGST Delhi West Commissionerate. The final reply to the SCNs was filed by the party on 14.03.2024 and the department has adjudicated all the 5 (Five) SCNs on 28.03.2024 i.e. within two weeks after receiving the final reply.	
32.	Echo International v. Commissioner of Customs Export and Anr.	25.05.2009	26.03.2024	-	• 05.01.2024 • 09.02.2024	-	Pre

	WP (C) 6190 / 2024						
33.	Daily Ajit Punjabi Newspaper Sadhu Singh Hamdard Trust and Anr. v. Principal Commissioner of Customs and Anr. WP(C) 6253/2024	22.12.2006 and Addendum dated 29.10.2007	07.02.2024	• Transferred to the Call book on 29.06.2016 in light of Board's Instructions F.No.276/104/2016-CX.8A(pt) dated 29.06.2016 • SCN taken out of call book on 03.01.2017 in view of Board Instruction No. F.No.276/104/2016-CX.8A(pt) dated 03.01.2017 • In terms of F.No.437/143/2009-Cus. Dated 03.11.2017 transferred to Call book w.e.f. 3.11.2017 • In terms of F.No.437/143/2009-Cus.IV dated 03.05.2019, taken out of call book. • In terms of Board's Instructions No. 04/2021-Cus. Dated 17.03.2021, Noticees informed that SCN has been transferred to Call book vide letter dated 06.04.2021 • In terms of Circular No. 07/2022-Customs dated	There were 18 Noticees. PHs on 06.01.2014 17.06.2015 25.06.2015 18.05.2017 08.09.2023 22.11.2023 15.12.2023 ***(Pages 5 to 16 of the reply)***	Noticees regularly vide letters dated 02.01.2007, 17.01.2007, 19.01.2007, 22.01.2007, 01.03.2007, 3.5.2007, 20.11.2007, 29.03.2008, 06.06.2008 01,09.2008, 13.01.2009 15.06.2009, 03.08.2007, 29.10.2007, 06.11.2007, 20.11.2007, 05.01.2008, 01.02.2008, 02.04.2008, 28.04.2008, 17\8.06.2008, 07.08.2004, 18.09.2008 23.10.2008, 21.06.2010 were seeking one or the other RUDs or Non-RUDs. This was despite the DRI having informed vide their communication dated 9.02.2008 that all RUDs have been supplied to all the noticees.	Pre

				31.03.2022 F.No.437/143/2009-Cus. Dated 03.11.2017 transferred to Call book w.e.f. 3.11.2017 • Board Circular No.07/2022-Customs dated 31.03.2022 • Taken out of call book on 31.03.2022			
34.	Syona Spa v. Union of India and Ors. WP(C) 6429/2024	20.03.2020	16.01.2024	• No call book placement • Delay due to COVID and 73(4B) to be interpreted as not mandatory as it states that the adjudication is to be completed within one year where it is possible to do so • Petitioner caused delay by filing reply to SCN almost 2.5 years after date of SCN i.e. on 29.07.2022	PHs on: • 25.09.2023 • 05.10.2023 • 12.10.2023 However, none appeared on the above dates.	None	Post
35.	B.E. Contracts (P) Ltd. v. Commissioner, CGST Audit-II, Delhi WP(C) 6524/2024	25.06.2019 and 20.09.2023 (corrigendum)	20.03.2024	-	29.01.2024	-	Post

36.	Delhi International Airport Limited v. Commissioner of CGST and Central Excise WP(C) 6545/2024	24.04.2015	31.04.2024	No callbook placement Delay due to COVID and 73(4B) to be interpreted as not mandatory as it states that the adjudication is to be completed within one year, where it is possible to do so.	Notice on 08.12.2023, attended on 22.12.2023.	None	Pre
37.	GMR Airport Infrastructure Limited v. Union of India and Ors. WP(C) 6548/2024	**30.09.2020** (under Section 73 of the Finance Act, 1994)	**13.02.2024** (Order passed within less than 3 months from the date of Personal Hearing)	-	• Reply filed on **20.09.2021** (nearly one year after the issuance of SCN) • Corrigendum to SCN issued on 21.09.2023. • Personal Hearing granted on **05.12.2023**	-	The present case does not pertain to the Customs Act and therefore the amendment of 2018 is **not applicable** to the facts of the present case. In the present case, SCN has been issued under Section 73 of the Finance Act, 1994.

							Section 73(4B) provides as under: *The Central Excise Officer shall determine the amount of service tax due under sub-section (2)—* *(a) within six months from the date of notice where itis possible to do so, in respect of cases falling under 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 the proviso to sub-section (1) or the proviso to sub-section (4A)].
38.	M/s J.R. International v. Principal Commissioner of Customs and Anr. WP(C) 6714/2024	07.11.2013	15.01.2024	• Impugned SCN was transferred 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. • 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. 437/143/2009-Cus.IV dated 03.05.2019.	28.12.2023	• 14.08.2014 – Nobody appeared on the given date and time. • 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.	Pre

				• 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.		• 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 abeyance. • 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 with case will be	

						decided based on available records. • 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. • 05.10.2017 – None of the noticees attended the PH.	
39.	Shri. Surinder Garg and Ors. v. Principal Commissioner of Customs Import and Ors. WP(C) 7327/2024	22.12.2006 with addendum to SCN dated 29.10.2007	07.02.2024 ***Petitioners cannot object to conducting of Personal Hearing and subsequent passing of the Adjudication order as they themselves requested for a personal hearing by letters dated 06.05.2023, 09.05.2023, 06.09.2023 and***	03.05.2007 and reminders dated 20.11.2007, 29.03.2008, 06.06.2008, 01.09.2008, 13.01.2009 And 15.06.2009	Petitioner asked for documents		Pre
				03.08.2007	Request for supply of RUDs was forwarded to DRI		
				29.10.2007	Addendum to Show Cause Notice was issued		

			18.11.2023 and had even requested for a virtual link for the same.	06.11.2007	Petitioner states that photocopies of the some documents are unclear.	
				20.11.2007 / 05.01.2008	Petitioner requested to provide the test reports	
				01.02.2008	M/s Newsprint Trading Corporation submitted a letter referring to test reports stated to be obtained in some other case	
				19.02.2008	**DRI informed that RUDs have been supplied to all the noticees alongwith the Show Cause Notice. However, on request of the noticees, relied upon documents have been provided to the noticees and noticees have acknowledged it.**	
				02.04.2008	Petitioners requested for RUDs and list of RUDs	
				28.04.2008	Petitioners requested for documents	
				18.06.2008	M/s newsprint Trading Corporation submitted a letter dated 16.08.2008 requesting release	
				07.08.2008	Petitioners requested for fresh and testing	
				18.09.2008	Petitioners filed WP(C) No.4288/2008 for re-testing of samples which was allowed.	
				23.10.2008	Vide letter dated 17.10.2008, DRI informed that in compliance of the Order dated 02.09.2008 of the Hon'ble High Court of Delhi, fresh samples were sent to CPPRI, Saharanpur for testing. DRI also forwarded copies of the test report dated 24.09.2008 alongwith test result and observation to the Adjudicating Authority.	
				20.11.2008 04.12.2008	Petitioners letters requesting for release of 113.568 MTS of goods on the basis of test reports.	

				12.01.2009 03.03.2009		
				19.05.2009	Provisional release was granted.	
				30.06.2009	**DRI issued letter that documents being asked are not RUDs and thus may not be provided.**	
				21.06.2010	Co-Noticee Shri Gopal Tejpal Khetan submitted a letter dated 15.06.2010 denying the allegation and seeking copies of RUDs.	
				18.02.2011	The Hon'ble Supreme Court in *Commissioner of Customs vs Sayed Ali* [2011 (265) ELT 17] held DRI officers to not be proper officers for issuing the demand notice. However, Customs Act was amended by the Legislature and various Notifications/Circulars, like CBIC Circular 44/2011-Cus dated 23.09.2011 and CBIC Notification No 40/2012-Cus (N.T) dated 02.05.2012 assigning various officers of Customs, including the DRI, the functions of the "Proper Officers" as mentioned in the Customs Act	
				09.12.2013	Personal hearing notice was issued for hearing on 06.01.2014	
				03.01.2014	Reply to PH letter dated 09.12.2013	
				09.10.2014	Adjudication file was transferred to the Commissioner (Adjudication), NCH in light of the Boad letter F.No. 437/03/2012/Cus-IV dated 20.01.2012.	
				01.06.2015	Personal hearing notice issued to noticees for Personal hearing on 25.06.2015.	
				17.06.2015 - PH	Petitioners stated that reply to SCN could not be filed	
				25.06.2015	Personal hearing was attended by Petitioners.	

					Counsel for co-noticees sought copies of RUDs and Non RUDs	
				25.06.2015	Petitioner submitted a letter dated 24.06.2005 challenging the jurisdiction of DRI officers to issue SCN and seeking RUDs	
				25.03.2016	Vide letter It was informed by the DRI that RUDs were provided on 04.04.2007 and provided proof of acknowledgment	
				29.06.2016 (Transfer to Call Book)	Board's Instruction issued vide F No. 276/104/2016-CX.8A(Pt.) dated 29.06.2016.	
				03.01.2017 (Taken out of Call Book)	Board's Instruction issued vide F No. 276/104/2016-CX.8A(Pt.) dated 03.01.2017.	
				18.05.2017	Personal hearing notice was issued to noticees to appears on 09.06.2017 Petitioner submitted they have not received documents	
				03.11.2017 (Transfer to Call Book)	Board's Instruction issued vide F No. 437/143/2009-Cus.IV dated 03.11.2017	
				03.05.2019 (Taken out of Call Book)	office Memorandum issued vide F No. 437/143/2009-Cus.IV dated 03.05.2019	
				2020-21	Lockdown in the country due to COVID Pandemic	
				06.04.2021	Noticees were informed -transferred to call book -Board's instructions No.04/2021-Customs dated 17.03.2021	

				31.03.2022	Taken out of call Book -CBIC Circular No. 07/2022-Customs dated 31.03.2022	
				03.08.2023	Personal hearing notice was issued to the noticees appears on 08.09.2023	
				13.09.2023	Petitioners reiterated their request for documents.	
				07.11.2023	Notice for personal hearing issued to appear on 22.11.2023 and it was also conveyed that if any noticee wants to collect RUDs the same may be collected in Pen Drive. Petitioner received the documents in pen drive on 16.11.2023.	
				22.11.2023 PH)	CO-Noticees stated that today RUDs have been received in soft copy in his pen drive. He asked time upto 4 weeks to file defence reply.	
				15.12.2023 (PH)	Personal hearing was attended. Petitioners said that they have gone in High Court & filed WRIT and requested case be kept in abeyance.	
				27.12.2023	Petitioners requested to keep the case in abeyance due to Writ.	
				24.01.2024	Vide letter dated 24.01.2024, noticee were informed that RUDs have been supplied by the DRI and a soft copy of the same was also provided by the concerned branch in pen drive. Further as sought by them, copies of Duty Calculation Charts viz. Table A, Table B1 and table B2 and list of RUDs having Sr. No.56 & 57 were forwarded to the noticees. Noticees were requested to submit their reply.	
					In view of the above, it is apparent that Respondents have always been trying to complete the adjudication process, but it is the Petitioners who deliberately and intentionally procrastinated the Adjudication process by repeating the same thing that they have not received all documents to invoke the defence of principal of natural justice, whereas the RUDs were received by them long time back.	

40.	Elof Hansson India Private Limited v. Principal Commissioner Inland Container and Anr. WP (C) 7355/2024	8 SCNs been issued. 22.12.2006 22.12.2006 23.12.2006 23.12.2006 10.03.2008 18.03.2008 23.05.2008 & 12.01.2009	Order passed on 07.02.2024 in SCN F.No.23/118/2005-DZU dated 22.12.2006 and remaining SCN not adjudicated yet	• Impugned SCN was transferred 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. • 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. 437/143/2009-Cus.IV dated 03.05.2019. • 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.	• 06.01.2014 • 25.06.2015 • 09.06.2017 • 08.09.2023 • 22.11.2023	-	Pre

				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.			
41.	Thermo Control and Instruments and Ors. v. Principal Commissioner of Customs and Anr. WP© 8074/2024	20.04.2009	19.01.2024	SCN was transferred to call book on 18.10.2016, 06.01.2017 and 29.05.2019. The impugned SCNs were taken out of Call Book in January' 2017 in compliance of Board's Order D.O.F. No. 437/143/2009-Cus IV dated 06.01.2017.	• 22.06.2017 • 21.11.2019 • 11.08.2023 • 27.12.2023	-	Pre
42.	Chander Mohan and Co. v. Principal Commissioner of Customs and Ors. WP(C) 8077/2024	04.11.2011	19.01.2024	• Impugned SCN was transferred 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. • 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.	• 21.11.2019	• 23.06.2017 • 11.08.2023 • 27.12.2023	Pre

				• 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. 437/143/2009-Cus.IV dated 03.05.2019. • 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.			
43.	Ascent Construction Pvt. Ltd. v. Commission	23.10.2013	28.03.2024	• The SCN was not transferred to the call book. • The Petitioner vide its reply during Personal Hearing	Personal hearing was granted to the Petitioner on: • 26.10.2023	-	Pre

	er, CGST Delhi (East) WP(C) 8355/2024			scheduled on 19.10.2015 had requested the Respondent to transfer the case for a matter pertaining to 'goods supplied free of cost by the contractee' to the call book, however, no proceedings pertaining to transfer of the said matter to the call book took place.	• 03.11.2023 • 21.11.2023 • 29.11.2023 • 18.12.2023 • **20.12.2023** – The only time when the Petitioner, through its authorised representatives, made itself available for the personal hearing.		
44.	Shree Ganesh Metal Co. vs. The Addl. COC Import W.P.(C)-5767/2024	31.12.2013	27.02.2024	• SCN was transferred to call book w.e.f. 29.06.2016 in light of the Board's Instruction issued vide F No. 276/104/2016-CX.8A(Pt.) dated 29.06.2016. • The SCN was taken out from the call book in light of the Board's Instruction issued vide F No. 276/104/2016-CX.8A(Pt.) dated 03.01.2017. • Impugned SCN was transferred again to call book w.e.f., 03.11.2017 in light of the Board's Instruction issued vide F No. 437/143/2009-Cus.IV dated 03.11.2017 taken out from the call book in light of the office Memorandum issued vide F No. 437/143/2009-Cus.IV dated 03.05.2019.	Personal hearing was granted to the noticees and fixed for 28.04.2023 and 09.05.2023. However, none of the notices appeared in the personal Hearing. Thereafter, PH was fixed on 28/29/30.11.2023 and in response to which, it came to notice that, M /s Shree Ganesh Metal Co. has filed Writ Petition in the subject matter.	-	-

				• Impugned SCN was again transferred to call book w.e.f 17.03.2021 in light of the Board's Instruction No. 04/2021-Customs dated 17.03.2021. • SCNs were taken out from the call book in light of the CBIC Circular No. 07/2022-Customs dated 31.03.2022			
45.	Lakshman Overseas vs. PRINCIPAL COMMISSIONER OF CUSTOMS (IMPORT) W.P: 5952/2024	30.04.2010	OIO not passed	• *Member (Customs) vide D.O.F. No.437/143 / 2009-CusIV-pt.II dated 06.01.2017 directed the field formations to draw up an action plan for adjudications of these cases in a time bound manner.* • Board's Circular No. 1053/02/2017-CX dated 10.03.2017 stipulates that where the department has gone in appeal to the appropriate authority, the case can be transferred to call book • In compliance of the specific instruction bearing F.No.276/104/ 2016- CX.8A (Pt.) dated 03.09.2019 issued by the Board the case has been taken out from call book and	-	-	-

				adjudication proceedings have been initiated.			
46.	Shri. Prakash Garg and Ors. v. Principal Commissioner of Customs Import and Ors. WP(C)5529/2024	Same as WP(C) 7327/2024. ***However, Petitioner cannot object to conducting of personal hearing and subsequent passing of the adjudication order as they themselves requested for a personal hearing by letters dated 06.09.2023 and 18.11.2023 and had even requested for a virtual link for the same.*** ***Also, it is apparent that Respondents have always been trying to complete the adjudication process, but it is the Petitioners who deliberately and intentionally procrastinated the adjudication process by repeating the same thing that they have not received all documents to invoke the defence of principal of natural justice, whereas the RUDs were received by them long time back.***					
47.	Abdul Khalique v. Commissioner Central Goods and Service Tax WP(C) 10020/2023	27.11.2009, 23.04.2013, 20.05.2014, 20.04.2015, 12.05.2016, 19.04.2018 and 10.02.2020	31.03.2023	-	08.10.2021 and 10.03.2023	Never appeared before 08.10.2021 and sought adjournment once thereafter.	-

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.