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

% ***Judgment reserved on: 19.02.2025***

Judgment pronounced on: 20.03.2025

\+ W.P.(C) 6235/2023

PARAS PRODUCTS .....Petitioner

Through: Mr. D. S. Nagi, Adv.

versus

COMMISSIONER CENTRAL GST, DELHI NORTH .....Respondent

Through: Mr. Ramachandran, SSC with Mr. Prateek Dhir, Adv.

\+ W.P.(C) 6376/2023

SAI ENTERPRISES .....Petitioner

Through: Mr. D. S. Nagi, Adv.

versus

COMMISSIONER CENTRAL GST, DELHI-WEST, N.D AND ANR .....Respondents

Through: Mr. Aditya Singla, SSC with Ms. Arya Suresh and Mr. Siddharth Saxena, Advs.

\+ W.P.(C) 6648/2023

JAINA POLYMERS .....Petitioner

Through: Mr. D. S. Nagi, Adv.

versus

COMMISSIONER CENTRAL GST, DELHI-WEST AND ANR .....Respondents

Through: Mr. Aditya Singla, SSC with Ms. Arya Suresh and Mr. Siddharth Saxena, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. This batch of writ petitions seeks to assail the **Orders-In-Original**[1] dated 30.12.2022 [in W.P.(C) 6235/2023] and 02.03.2023 [in W.P.(C) 6376/2023 & W.P.(C) 6648/2023] (hereinafter referred to as "**the impugned OsIO**") passed by the Respondents, whereby, *inter alia*, the Petitioners' goods were confiscated under Rule 25 of the Central Excise Rules, 2002 (hereinafter referred to as "**the Rules**") and penalty was imposed on the Petitioners for contravention of the provisions of the Rules. These petitions also seek the release of the Bank Guarantee furnished at the time of release of the seized goods.

BRIEF FACTS:

2. On 29.04.2011, pursuant to receipt of information, the Anti-Evasion Wing of the Central Excise, Delhi-1, conducted searches and effected seizures under the Central Excise Act, 1944 (hereinafter "**the Act**") from the premises of the Petitioner firms and that of Mr. Parmod Kumar Jain. A panchnama of the seized goods was duly drawn. Mr. Parmod Kumar Jain was the proprietor of M/s Paras Products and M/s Sai Enterprises, and his son, Mr. Ankit Jain, was the proprietor of M/s Jaina Polymers. During search, the following materials were seized at the premises:

[1] OsIO

S. No.	Goods seized from the premises (M/s)	Description of seized goods	Seizure value (INR)	Total Value (INR)
1.	Petitioner in W.P.(C) 6235/2023	Finished goods	10,97,496	39,95,816
		Raw Materials	8,34,300	
		Scrap	1,34,020	
		Moulds	39,95,816	
2.	Petitioner in W.P.(C) 6376/2023	Finished goods	9,59,900	18,47,750
		Raw Materials	1,87,850	
		Tata 407 vehicle	7,00,000	
3.	Petitioner in W.P.(C) 6648/2023	Finished goods	35,760	90,510
		Raw Materials	54,750	

3. The Petitioner firms were engaged in the manufacturing and clearance of footwear and soles falling under Chapter headings 6402 and 6406 of the Central Excise Tariff Act, 1985.

4. Further to this search, a common Show Cause Notice[2] dated 25.10.2011 came to be issued and on the passage of the **Central Goods and Services Tax Act**[3], 2017, the jurisdiction of the Respondent authorities altered and two (2) impugned OsIO came to be issued.

5. Two SCNs dated 25.10.2011 and 30.12.2014 came to be issued to the Petitioners. One in respect of the seized goods and the other for the offended goods (past clearances).

6. A common SCN dated 25.10.2011 was issued by Deputy Commissioner(AE), Central Excise, Delhi-1, to the Petitioners to show cause, as to: -

(a). Why the seized goods should not be confiscated under Rule 25 of the Rules *[w.r.t. all Petitioner firms]*,

[2]SCN
[3]CGST Act

(b). Why the amount of Rs. 15,00,000/- voluntarily deposited should not be appropriated towards duty liability *[w.r.t. M/s Paras Products, the Petitioner in W.P.(C) 6235/2023 only];* and

(c). Why penalty should not be imposed under Rule 25 for contravention of the provisions of the Rules *[w.r.t. all Petitioner firms]*.

7. The second SCN dated 30.12.2014 was issued to the Petitioner firms, proposing to demand duty in respect of offended goods cleared in the past. The said SCN was adjudicated vide Order-in-Original dated 28.08.2015 by Additional Commissioner, Central Excise, Delhi-1. In terms of the Order-in-Original, the duty demanded and interest and penalties imposed were paid, and in so far as the SCN dated 30.12.2014 is concerned, the same need not engage our attention.

8. It is the first SCN dated 25.10.2011 that will require our attention. This came to be adjudicated only on 30.12.2022 and 02.03.2023 *vide* two separate OsIO (the impugned OsIO).

9. The impugned OIO dated 30.12.2022 was in relation to the Petitioner in W.P.(C) 6235/2023, whereas, the impugned OIO dated 02.03.2023 was in relation to the Petitioners in W.P.(C) 6376/2023 & W.P.(C) 6648/2023.

SUBMISSIONS OF THE PARTIES:

10. The principal ground to assail the Impugned OsIO is the inordinate delay in the finalization of the adjudication proceedings, which is more than 11 years in both cases. It is in this regard that the Petitioners seek to draw sustenance from this Court's judgments in

Vos Technologies India (P) Ltd. v. Director General[4]***, S.B. Gurbaksh Singh v. Union of India***[5]*, **State of Punjab v. Bhatinda District Coop. Milk Producers Union Ltd.***[6], ***Sunder System (P) Ltd. v. Union of India***[7] and ***Siddhi Vinayak Syntex (P) Ltd. v. Union of India***[8].

11. In response thereto, the Respondent authorities would raise three contentions. *Firstly*, with the advent of the CGST Act on 01.07.2017, it had become difficult to make prompt adjudication, as the department was restructured and which led to numerous difficulties, including conducting physical verification of various registrants to avoid and prevent fraudulent activities and misuse of the new tax regime. *Secondly*, COVID-19 which adversely affected the smooth functioning of the department. *Thirdly*, the Petitioners themselves delayed the proceeding by not filing reply on time or filing belated reply and also that the Petitioners avoided joining the physical hearing. Therefore, there was no wilful delay on the part of the department regarding the adjudication process.

12. To bolster this argument, the Respondent would place reliance on the decision of the Hon'ble Supreme Court in ***Commissioner, GST and Central Excise Commissionerate & Ors. vs. M/s Swati Menthol and Allied Chemicals Ltd &Anr***.[9] wherein the Department was allowed to conclude the adjudication in a time-bound manner even after the SCN was adjudicated after over a decade.

[4] Vos Technologies India (P) Ltd. v. Director General, 2024 SCC OnLine Del 8756
[5] S.B. Gurbaksh Singh v. Union of India, (1976) 2 SCC 181
[6] State of Punjab v. Bhatinda District Coop. Milk Producers Union Ltd., (2007) 11 SCC 363
[7] Sunder System (P) Ltd. v. Union of India, 2019 SCC OnLine Del 12137
[8] Siddhi Vinayak Syntex (P) Ltd. v. Union of India, 2017 SCC OnLine Guj 2609
[9] SLP (C) No. 20072/2021 dated 10 July 2023

ANALYSIS:

13. The date of issuance of the SCN and the impugned OsIO are not disputed. The SCN was issued on 25.10.2011 and finally adjudicated on 30.12.2022 and 02.03.2023 i.e after 11 years. The following table summarizes the time consumed in adjudicating the SCN dated 25.10.2011 and also the reasons for the delay in adjudication as per the Respondents:

Petitioner	**Search conducted on**	**Show Cause Notice**	**Reply**	**OIO passed on**	**Primary reasons for delay as per the Respondents (as given in the counter affidavits)**
M/s Paras Products [W.P.(C) 6235/2023]	29.04.2011	25.10.2011	14.12.2021	30.12.2022	1. Delay caused by the petitioner himself by delaying the submission of reply 2. Introduction of GST regime.
M/s Sai Enterprises [W.P.(C) 6376/2023]	29.04.2011		No Response filed despite letters dated 08.11.2021 and 22.11.2021	02.03.2023	1. Introduction of GST regime 2. COVID-19
M/s Jaina Polymers [W.P.(C) 6648/2023]	29.04.2011				

14. Section 11A of the Act empowers the taxing authorities to make recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded from the assessee. After issuance of the SCN, Section 11A(11) of the Act casts a duty upon the authorities to determine the due amount of duty of excise within six months/ two years, where it is possible to do so, from the date of notice. The relevant portion of Section 11A states as follows:

> "**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 shortpaid or erroneously refunded, for any reason, other than the reason of fraud or collusion or any wilful 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-
>
> (a) the Central Excise Officer shall, within two years from the relevant date, serve notice on the person chargeable with the duty which has not been so levied or 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;
> (b) the person chargeable with duty may, before service of notice under clause (a), pay on the basis of -
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> (i) his own ascertainment of such duty; or
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> (ii) the duty ascertained by the Central Excise Officer,
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> the amount of duty along with interest payable thereon under Section 11-AA.
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> (4) Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by the reason of-
>
> (a) fraud; or
>
> (b) collusion; or

(c) any wilful misstatement; 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 11-AA and a penalty equivalent to the duty specified in the notice.

(10) The Central Excise 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 of excise due from such person not being in excess of the amount specified in the notice.

(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 years from the date of notice, where it is possible to do so, in respect of cases falling under sub-section (4).”

15. This court, in ***Vos Technologies India,*** had the opportunity to consider the effect of inordinate delay and failure on the part of the tax authorities to conclude the adjudication proceedings within a reasonable period of time (arising out of the Customs Act[10], 1962, the Finance Act, 1994[11] and the CGST Act) and held that such delay/ failure to act within a reasonable period of time, constituted sufficient ground to quash such proceedings. This Court also held that the authorities are bound and obliged in law to make endeavors to

[10] Custom Act
[11] Finance Act

conclude adjudication with due expedition. Relevant extracts of the judgment are as follows:

> "…….
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> **2.** The principal ground of attack is the inordinate delay in the finalisation of the adjudication proceedings with the writ petitioners contending that the failure on the part of the respondents to conclude adjudication within a reasonable period of time and inordinately delaying the same for decades together would constitute a sufficient ground to annul those proceedings. They would contend that the principles of a 'reasonable period' which courts have propounded in connection with an adjudicatory function conferred upon an authority would apply and the impugned SCNs' and orders are liable to be quashed on this short score alone.
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> …….
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> **18.** This provision flows along lines similar to those appearing in the Customs Act and creates two separate streams dependent on whether the allegation be plainly of short-levy, non-levy or erroneous refund as contrasted with cases where that may have occurred by reason of fraud, collusion, wilful misstatement or suppression of facts. However, and of significance is sub-section (4-B), and which continues to employ the phrase "where it is possible to do so" as opposed to the amendments which came to be made in Section 28 of the Customs Act.
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> **20.** We have chosen to extract those provisions for the sake of completeness and notwithstanding the petitioners asserting that by virtue of Section 174(2) of the CGST Act, and which constitutes the 'Repeal and Saving' clause, it would be the provisions of the 1994 Act which would govern.
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> **21.** In terms of Section 73(1) of the CGST Act, which is principally concerned with cases other than where allegations of fraud, wilful misstatement or suppression of facts are made, and pertains to tax incorrectly computed, erroneously refunded or benefits wrongly availed, sets out terminal points within which action referable to that provision would have to be commenced and concluded. A final order on the culmination of adjudication is liable to be framed by the proper officer in terms contemplated under Section 73(9) of the CGST Act. By virtue of sub-section (10) thereof, the proper officer

is bound to frame such an order within three years from the due date for furnishing of an annual return. A notice commencing proceedings referable to Section 73 must be issued at least three months prior to the time limit as specified in sub-section (10) coming to an end. It is relevant to observe that Section 73(10) of the CGST Act uses the words "shall issue" and does not adopt the "where it is possible to do so" phraseology as employed by the Customs Act and 1994 Act. Similar is the position that obtains in cases where fraud, wilful misstatement or suppression of facts may be alleged, and in which eventuality it is the provisions of Section 74 of the CGST Act which would govern.

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

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85. The position which thus emerges from the aforesaid discussion and a review of the legal precedents is that the respondents are bound and obliged in law to endeavour to conclude adjudication with due expedition. Matters which have the potential of casting financial liabilities or penal consequences cannot be kept pending for years and decades together. A statute enabling an authority to conclude proceedings within a stipulated period of time "where it is possible to do so" cannot be countenanced as a license to keep matters unresolved for years. The flexibility which the statute confers is not liable to be construed as sanctioning lethargy or indolence. Ultimately it is incumbent upon the authority to establish that it was genuinely hindered and impeded in resolving the dispute with reasonable speed and dispatch. A statutory authority when faced with such a challenge would be obligated to

prove that it was either impracticable to proceed or it was constricted by factors beyond its control which prevented it from moving with reasonable expedition. This principle would apply equally to cases falling either under the Customs Act, the 1994 Act or the CGST Act.

86. When we revert to the facts that obtain in this batch, we find that the respondents have clearly failed to establish the existence of an insurmountable constraint which operated and which could be acknowledged in law as impeding their power to conclude pending adjudications. In fact, and to the contrary, the frequent placement of matters in the call book, the retrieval of matters therefrom and transfer all over again not only defies logic it is also demonstrative of due application of mind quite apart from the said procedure having been found by us to be contrary to the procedure contemplated by Section 28. The respondents have, in this regard, failed to abide by the directives of the Board itself which had contemplated affected parties being placed on notice, a periodic review being undertaken and the proceedings having been lingered unnecessarily with no plausible explanation. The inaction and the state of inertia which prevailed thus leads us to the inevitable conclusion that the respondents clearly failed to discharge their obligation within a reasonable time. The issuance of innumerable notices would also not absolve the respondents of their statutory obligation to proceed with promptitude bearing in mind the overarching obligation of ensuring that disputes are resolved in a timely manner and not permitted to fester. Insofar as the assertion of the 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."

16. The relevant portion of Section 11A of the Act is *pari materia* to the corresponding provisions of the Customs Act, the Finance Act and the CGST Act, and thus, the mandate of the said judgement is applicable to the present cases.

17. The Respondents in the impugned OsIO have not given any explanation as to why the SCN could not be decided finally for over 11 years. However, in the counter affidavits, the Respondents have endeavored to give a feeble justification for the delayed adjudication premised on (a) the advent of the CGST Act in 2017 & its shortfall in the administrative functioning subsequently, (b) COVID-19 and (c) the delay caused by the Petitioners by not filing reply on time or filing belated reply to the SCN and by avoiding joining the physical hearings.

18. These feeble justifications, for whatever they are worth, in any case, pertain to the events subsequent to July-2017. There is no plausible reason as to why the adjudication could not be done between 2011-17 and the inaction for the said period remains unexplained.

19. With respect to the allegation of giving late replies, seeking repeated adjournments or failing to cooperate in the proceedings by the assessees, this Court has already held in *Vos Technologies India* that in any such situation, nothing prevents the Respondent authorities from proceeding *ex-parte* or refusing to reject such requests if considered lacking in bona fides. COVID-19 and introduction of the CGST Act, in any event cannot condone the delay for the period before these intervening events. These appear to be excuses to seek to explain inaction by the Respondents for over 11 years.

20. So far as the Respondents' reliance upon the decision of the Hon'ble Supreme Court in *M/s Swati Menthol* is concerned, this Court has already pondered upon the same in *Vos Technologies India.*

21. In *Vos Technologies India,* this Court categorically held that, matters having financial liabilities or penal consequences cannot be kept unresolved for years; and the phrase "where it is possible to do so" cannot be a license to keep matters pending for years. The flexibility provided by the legislation is not meant to be overused or construed as sanctioning indolence. The statutory leverage cannot be brought into play routinely and in an unfettered manner for years, without any due justification or explanation.

22. As is clear from the facts of the present case, the rationale espoused in the decision of this Court in *Vos Technologies India,* would apply in full force. The impugned OsIO dated 30.12.2022 [in W.P.(C) 6235/2023] and 02.03.2023 [in W.P.(C) 6376/2023 & W.P.(C) 6648/2023] passed by the Respondents are hereby quashed. Consequently, the Respondent authorities are directed to release the Bank Guarantee furnished by the Petitioner at the time of release of the seized goods, within a period of 6 weeks.

23. The Petitions and pending application(s), if any, are disposed of in the above terms.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.

MARCH 20, 2025/sm/er