IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 76100 of 2023

(Arising out of Order-in-Original No.KOL/CUS/Commissioner/PORT/ADJN/11/2023 dated 29.09.2023 passed by Commissioner of Customs(Port), Kolkata)

M/s. G.D.Traders, **: Appellant**
3A , Garstin Place, 6 th Floor, Kolkata-700001.

VERSUS

The Commissioner of Customs (Port), Kolkata, **: Respondent**
15/1, Strand Road, Kolkata-700001.

With

Customs Appeal No. 76346 of 2024

(Arising out of Order-in-Original No. KOL/CUS/Commissioner/PORT/ADJN/11/2023 dated 29.09.2023 passed by Commissioner of Customs(Port), Kolkata)

Shri Vinod Lachwani, **: Appellant**
54/1, Garcha Road, 2nd Floor, Kolkata-700019.

VERSUS

The Commissioner of Customs (Port), Kolkata, **:Respondent**
15/1, Strand Road, Kolkata-700001.

APPEARANCE:

Shri S.C.Ratho & N.K.Chowdhury, Advocates for the Appellants

Shri A.K.Choudhary, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75650-75651/ 2025

DATE OF HEARING :26.02.2025

DATE OF DECISION: 07.03.2025

Order : [Per Shri Ashok Jindal]

Both the appeals are arising of a common order therefore, both are disposed of by a common order.

2. The facts of the case are that Shri Vinod Lachwani was engaged in business of imports since 1997 in the name and style of M/s. PDM Impex. The appellant was also having another firm viz. PDM Import & Export Company Pvt. Ltd. of which he was one of the Directors. The appellant was importing watch parts, electronic goods etc. and made no export. PDM Import & Export Company Pvt. Ltd. was incorporated in the year, 2003 but did not undertake any import or export. The appellant was also undertaking liasoning job between some importers, exporters and different CHAs, transporters, Shippers Government Department such as Customs House and some of such importers for whom he had worked were Man Industries of Delhi, Sonam Exports, ESS ERR Industries, Rama Times, A.S.Exports, Laxmi Merchandize, Winster Electronics and Indigo Enterprise etc. The appellant was earning some money for undertaking this liasoning job. The appellant was importing the goods mainly from Hongkong and Singapore from different overseas suppliers. During the period from July, 2002 to November, 2002 the appellant filed five Bills of Entry and the said Bills of Entry were finally assessed and allowed to be cleared on payment of duty without any condition. The department accepted those final assessments. Thereafter, the officers of the department visited their office, residence and recovered some documents from his office which were relating to the import of the aforesaid firm for which the appellant was undertaking liasoning job. The statement of the appellant was recorded in various occasions wherein he stated that the appellant was doing import in the name of other companies. The appellant retracted the said

statement before the Chief Metropolitan Magistrate. During the course of investigation, it was alleged that there was mis-declaration and under-valuation of the goods. The DRI Authorities collected export declaration from the foreign suppliers in respect of twenty eight cases and the statement of different importers having IEC Code Nos. were recorded and those importers in their statements have stated that they do not know the appellant. Some of them stated that they were not aware of those imports and some of them have stated that the appellant had imported the goods in their names. From the valuation report of the foreign suppliers and the statement of some other importers and Customs House agent etc. it has been inferred that the appellant is the actual importer of the entire goods. Proceeding was initiated by issuing the Show Cause Notice on 28.09.2004.

3. The appellant replied to the Show Cause Notice and thereafter first time the appellant was granted the hearing notice on 28.06.2018 wherein the Ld. Advocate submitted that the Show Cause Notice is not maintainable as the Additional Director General of DRI lacks jurisdiction to issue the Notice. As the Show Cause Notice was issued in 2004 and the same was not concluded till the year 2018, therefore, delay in adjudication is in violation of principle of natural justice and reopening of the issue after 14 years was not permissible in law. Follow up, personal hearing was provided on 22.09.2022 which was attended by the appellant and sought adjournment. Again opportunity was given on 2nd March, 2023. The appellant requested for postponing the hearing to decide the issue on jurisdiction and thereafter the order in original was passed in 29.09.2023 and

corrigendum was issued on 13.10.2023. Therefore, he prayed that the whole of the proceedings are not sustainable in the light of the decision of this Tribunal in the case of Kopertek Metals Pvt. Ltd. vide Final Order No. 59511-59720/2024 dated 25.11.2024. Further in the case of Rachana Garments Pvt. Ltd.-2023 (383) ELT 15 (Bom.)/(2022) 1 Centax 190 (Bom.)

4. On the other hand, the Ld. Authorized Representative reiterated the findings of the impugned order.

5. Heard the parties. Considered the submissions.

6. We find that the facts which are not in dispute are that imports took place during the period July, 2002 to November, 2002 and the Show Cause Notice has been issued on 28.09.2004 and the adjudication took place on 22.09.2023. The said adjudication is bad in law as held by this Tribunal which has examined the issue of adjudication in reasonable time in the case of Kopertek Metals Pvt. Ltd. and others vide Final Order No. 59511-59720/2024 dated 25.11.2024 observing as under:

"45. It is evident that in all the 209 cases, the adjudication has taken place beyond the period stipulated in sub-section (11) of section 11A of the Central Excise Act and there is no plausible explanation as to why it was not possible for the Adjudicating Authority to complete the adjudication process within the stipulated time.

46. Thus, the impugned orders that have been assailed in all the 210 Excise Appeals would have to be set aside and are set aside. The appeals are,

accordingly, allowed with consequential relief(s), if any to the appellant. "

7. Further we find that the Hon'ble High Court of Bombay also got an opportunity to deal the issue in the case of Rachana Garments Pvt. Ltd. (Supra) wherein the Hon'ble High Court observed as under:

"*18. Therefore, it has been reiterated that where show cause notices were issued but adjudicating order has not been passed for such a long period. In this case almost 25 years, such show cause notices cannot be kept pending. Such delayed adjudication wholly attributable to the revenue would be in contravention of procedural fairness and thus violative of the principles of natural justice. The action, which is unfair and in violation of principles of natural justice cannot be sustained. Various judicial pronouncements have taken a 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 reasonable period.*

19. As held by this Court in Sanghvi Reconditions Pvt. Ltd. (supra) that was relied upon by Mr. Shroff, when the revenue keeps the show cause notice in call book, then it should inform the parties about the same. It serves two purposes, i.e. (a) it puts the party to notice that the show cause notice is still alive and is only kept in abeyance which would enable the party concerned to safeguard the evidence till the show cause notice is still alive and is only kept in abeyance which would enable the party *concerned to safeguard the evidence till the show cause notice is taken up for adjudication, and (b) if the notices are kept in call book, the parties get 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.*

21. We respectfully agree with the view expressed by a Division Bench of this Court in Sushitex Exports (India) LTd. (supra). After 25 years, petitioners, having approached this Court impugning the show cause notice, cannot be made to suffer work out prejudice to them. Had Petitioners not invoked the jurisdiction of this Court, the show cause notice would have continued to gather dust.

22. In the circumstances, we are inclined to allow the Petition."

8. In this case, we also hold that the Show Cause Notice has been adjudicated with inordinate delay. In that circumstances, the proceedings against the appellants are not sustainable. Consequently, the impugned order is set aside and appeals are allowed with consequential relief, if any.

(Pronounced in the open court on 07.03.2025)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K.ANPAZHAKAN)
MEMBER(TECHNICAL)

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