



\$~10

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

% **Date of Decision: 10.03.2025**

+ W.P.(C) 7295/2021 and CM APPL.3324/2023

M/S SAHA TRADERS

....Petitioner

Through: Mr. Indranil Banerjee and Mr.
Shubhankar Jha, Advocates.

versus

ZONAL JOINT DIRECTOR GENERAL OF FOREIGN
TRADE(CLA), GOVERNMENT OF INDIA, MINISTRY OF
COMMERCE AND INDUSTRY, INDRAPRASTHA BHAWAN, A
WING, I P ESTATE, NEW DELHI-110002 & ANR.....Respondents

Through: Mr. Ruchir Mishra, Mr. Sanjiv Kumar
Saxena, Ms. Poonam Shukla, Mr.
Mukesh Kumar Tiwari and Ms. Reba
Jena Mishra, Advocates for UoI.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (ORAL)

CM APPL.22968/2021 (Exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

W.P.(C) 7295/2021

3. The present appeal assails a Show Cause Notice 3/69/ECA-II/AM-05/CLA dated 02.05.2005 (hereinafter '*the impugned SCN*'), issued against the petitioner under the Foreign Trade (Development & Regulation) Act, 1992 (hereinafter '*FTDR Act*').
4. The petitioner also assails the legality and validity of the purported DEPB license cancellation letter No. 05/02/001/00061/AM-16/ECA/CLA/360986 dated 07.08.2019, communicated to the Customs



Department enclosing therewith the cancellation letters in respect of 38 DEPB scrips/licenses issued in favour of the petitioner.

5. It is the contention of the petitioner that during the period between 2002 and 2003, the petitioner was in the business of importing and exporting certain goods. On the basis of certain exports made by one M/s Ceean Commerce Pvt. Ltd., the petitioner duly applied to the office of respondent no.1 for issuance of 38 DEPB licenses with Freight on Board (FOB) value aggregating to Rs. 67,36,59,551.90 and corresponding Cost Insurance Freight (CIF) value aggregating to Rs. 8,08,38,924/-. These DEPB licenses were for a certain amount of duty credit and were meant to be utilized for adjusting customs duty against import of goods into India.

6. In the regular course of business, the aforesaid freely transferable DEPB Licenses were transferred to various importers/parties for valuable consideration on a principal-to-principal basis. The Custom Department initiated certain investigations against M/s Ceean Commerce Pvt. Ltd. and the petitioner, in respect of certain exports to Bangladesh, pursuant to which, the impugned SCN was issued by the respondent no.1, alleging, *inter alia*, that the exports made by the M/s Ceean Commerce Pvt. Ltd. were fictitious and false. It was alleged that the petitioner and the aforesaid M/s Ceean Commerce Pvt. Ltd. had entered into a criminal conspiracy with the object to obtain fraudulent DEPB benefit which is punishable under Section 9(4) of the FTDR Act and Sections 14 and 11(2) thereof, read with Rule 10(a) of the Rules framed thereunder.

7. The impugned SCN was contested by the petitioner; certain communications were also addressed by the petitioner seeking that the relevant documents which form the basis of the impugned SCN be supplied to it. The petitioner also participated in the personal hearing that was scheduled pursuant



to the impugned SCN. While reiterating its request for supply of relevant documents, various correspondences were exchanged between the petitioner and the respondent after issuance of the impugned SCN and the hearing held in respect thereof.

8. When the petition came up for hearing on 19.12.2024, this Court, taking note of the background of the present petition expressed the view that non-adjudication of the show cause for decades was, by itself, a valid ground to set the same aside. The relevant observations in the order dated 19.12.2024 read as under:-

“2. The Petitioner is aggrieved by the show cause notice dated 2nd May, 2005 issued by the office of Zonal Joint Director General of Foreign Trade under the Foreign Trade (Development and Regulation) Act, 1992, which allegedly has not been adjudicated till date.

3. In the opinion of the Court, if a show cause notice is not adjudicated even after two decades after its issuance, that itself is a good ground to set it aside. The Respondents have no convincing explanation for the lapse of their part for 20 long years for not deciding the show cause notice. Although, Mr. Ruchir Mishra, counsel for the Respondents, has mentioned about some restrain orders, however, he has no particulars of such order.

4. Since, the copy of the show cause notice placed on record seems to be incomplete, Respondents are directed to produce the same on the next date of hearing. Additionally, the Zonal Joint Director General of Foreign Trade is directed to remain present before this Court on the next date of hearing along with the complete file relating to the show cause notice, which is the subject matter of the present petition.”

9. Subsequently, on 28.01.2025, it was recorded by this Court as under:-

“1. Respective counsel for the parties have been heard at some length.

2. The concerned Deputy Director General of Foreign Trade is present in the Court.

3. On a query of the Court, he admits that (i) show cause notice dated 02.05.2005 has not been adjudicated; and (ii) cancellation order dated 07.08.2019 was passed without affording an opportunity of hearing to the petitioner ; an opportunity of hearing was afforded only during the period 2005-07.



4. List for further arguments on 10.03.2025.

5. In the meantime, the respondents are directed to file the “38 DEPB Scripts Cancellation Letters” referred to in the communication dated 07.08.2019 addressed by the Foreign Trade Development Officer to the Commissioner of Customs (Preventive), filed as Annexure R-1 to the affidavit filed on behalf of the respondents, in terms of the order/s dated 23.08.2021 and 01.10.2021. Let the same be filed within a period of two weeks from today.

6. The respondents are also at liberty to file additional affidavit to deal with the averments made in the amended writ petition within a period of two weeks from today.”

10. While the respondents have placed on record the 38 DEPB Scrip cancellation letters, it has not filed any additional affidavit for which liberty was granted *vide* Para 6 of the order dated 28.01.2025.

11. The 38 DEPB Scrip Cancellation letters are identical in terms. One such cancellation letter is reproduced hereunder:

“To
SAHA TRADERS
HOUSE NO. 2732, GALI NO. 7
CHUNA MANDI, PAHARGANJ,
NEW DELHI-110055

Sub: Cancellation of Authorisation (DEPB-Post Export)

Sir/Madam,

I write to inform you that, the following authorization has been cancelled on 25.07.2019 due to :

DEPB NO. 0510073656 DT. 05.11.2002. HAS BEEN CANCELLED WITH THE APPROVAL OF COMPETENT AUTHORITY ON FILE, ON THE BASIS OF DRI, KOLKATA LETTER NO. DRI. S.N. VIII (6)8/EXP/P&IWB/03/661 DT. 18.03.2005.

Scheme: DEPB-Post Export

Authorisation No.: 0510073656 dated 26.11.2002

Your's faithfully

Place: New Delhi
Date: 25.07.2019

(Chaman Lal)
Foreign Trade Development Officer



2025:DHC:1667



(Issued from file: 05/28/051/00316/AM03/ Date: 20.11.2002)”

12. The 38 DEPB Scrip Cancellation letters are in respect of the same DEPB Scrips which were subject matter of the impugned SCN which remains unadjudicated till date. As noticed in the order dated 28.01.2025, the non-adjudication of the impugned SCN was conceded by the concerned Deputy Director General of Foreign Trade, who was present in Court on the said date.

13. It is also apparent that the cancellation order/letter dated 07.08.2019 was passed without any prior intimation/notice to the petitioner and almost 15 years after the impugned SCN was initially issued. The basis for issuance of the 38 DEPB Scrip cancellation letters has been set out in the impugned SCN. The factual premise of the same is strenuously contested by the petitioner.

14. The impugned cancellation order / letter dated 07.08.2019, in effect, is predicated on adverse conclusions drawn against the petitioner, without even adjudicating the impugned SCN issued as far back as 2005.

15. It is also apparent from the perusal of the impugned cancellation order / letter dated 07.08.2019 issued by the respondent no.1 (filed as Annexure-R1 to the affidavit filed on behalf of the respondent), that the same was issued in response to the letter bearing no. C. No. VIII/10/01/2005-Adjn. VSP II/13.12.2018 issued by the Customs Department. Evidently, there has been no application of mind as to the factual aspects highlighted by the petitioner in reply dated 06.12.2005 to the impugned SCN, prior to issuing the said cancellation letter dated 07.08.2019.

16. In the context of non-adjudication of the SCN dated 02.05.2005, learned counsel for the petitioner rightly relies upon the judgment of ***M/s VOS Technologies India Pvt. Ltd. Vs. The Principal Additional Director General &***



Anr. 2024:DHC:9493-DB, wherein it has been emphasized that the matters which have the potential of casting financial liabilities of penal consequences, cannot be kept pending for years and decades together. The relevant observations in the said judgment are as under:-

“85. The position which thus emerges from the aforesaid discussion and a review of the legal precedents is that the respondents are bound and obliged in law to endeavour to conclude adjudication with due expedition. Matters which have the potential of casting financial liabilities or penal consequences cannot be kept pending for years and decades together. A statute enabling an authority to conclude proceedings within a stipulated period of time "where it is possible to do so" cannot be countenanced as a license to keep matters unresolved for years. The flexibility which the statute confers is not liable to be construed as sanctioning lethargy or indolence. Ultimately it is incumbent upon the authority to establish that it was genuinely hindered and impeded in resolving the dispute with reasonable speed and dispatch. A statutory authority when faced with such a challenge would be obligated to prove that it was either impracticable to proceed or it was constricted by factors beyond its control which prevented it from moving with reasonable expedition. This principle would apply equally to cases falling either under the Customs Act, the 1994 Act or the CGST Act.

86. When we revert to the facts that obtain in this batch, we find that the respondents have clearly failed to establish the existence of an insurmountable constraint which operated and which could be acknowledged in law as impeding their power to conclude pending adjudications. In fact, and to the contrary, the frequent placement of matters in the call book, the retrieval of matters therefrom and transfer all over again not only defies logic it is also demonstrative of due application of mind quite apart from the said procedure having been found by us to be contrary to the procedure contemplated by Section 28. The respondents have, in this regard, failed to abide by the directives of the Board itself which had contemplated affected parties being placed on notice, a periodic review being undertaken and the proceedings having been lingered unnecessarily with no plausible explanation. The inaction and the state of inertia which prevailed thus leads us to the inevitable conclusion that the respondents clearly failed to discharge their obligation within a reasonable time. The issuance of innumerable notices would also not absolve the respondents of their statutory obligation to proceed with promptitude bearing in mind the overarching obligation of ensuring that disputes are resolved in a timely manner and not permitted to fester. Insofar as the assertion of the assessee's seeking repeated adjournments or failing to cooperate in the proceedings, it may only be noted that nothing prevented the respondents from proceeding ex parte or refusing to reject such requests if considered lacking in bona fides.



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.”

17. Despite the aforesaid facts, learned counsel for the respondent seeks to oppose the maintainability of the present petition on the premise that it is open for the petitioner to avail appellate remedy against the 38 “DEPB Scrip Cancellation letters”. The said contention is untenable. Even assuming that alternative remedy is available, this Court is not precluded from entertaining a writ petition in the event of gross violation of the principles of natural justice or in the context of abject arbitrariness/irrationality. This position has been affirmed by the Supreme Court in a series of judgments including ***Harbanslal Sahnia v. Indian Oil Corporation***, 2003 2 SCC 107 and ***Whirlpool Corporation v. Registrar of Trade Marks***, 1998 8 SCC 1.

18. As noticed in the present case, despite the impugned SCN remaining unadjudicated for decades, the cancellation order / letter dated 07.08.2019 was issued, which effectively condemned the petitioner unheard.

19. In the circumstances, the present petition is allowed.

20. Consequently, the impugned SCN, the communication dated 07.08.2019 and the 38 DEPB Scrip Cancellation letters referred to in the impugned cancellation order/ letter dated 07.08.2019, addressed to Commissioner of



2025:DHC:1667



Customs Department (Preventive) by the Foreign Trade Development Officer, are set aside.

21. Learned counsel for the respondents submits that the aforesaid directions will not have the effect of nullifying the orders passed by the Customs Department. Since no prayer has been made in the present petition as regards the action taken by the Customs Department, there is no occasion for this Court to make any observations with regard thereto.

22. All rights and contentions/remedies of the parties with regard to any action taken by the Customs Department are left open to be considered in appropriate proceedings, in accordance with law.

SACHIN DATTA, J

MARCH 10, 2025/at