

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Civil Writ Petition No. 19485/2022

Shivek Sharma, Legal Heir and S/o Late Shri Pawan Kumar Sharma, having its Address at 14, Achrol House, Civil Lines, Jaipur

----Petitioner

Versus

Union of India, through Commissioner of Customs, Air Cargo Complex (Export), Delhi having its Address at New Customs House, near IGI Airport, New Delhi-110037.

----Respondent

For Petitioner(s)	:	Mr. Siddharth Ranka with Ms. Satwika Jha Ms. Apeksha Bapna
For Respondent(s)	:	Mr. Kinshuk Jain, Sr. Standing Counsel for Customs, with Mr. Jay Upadhayay

HON'BLE THE CHIEF JUSTICE MR. K.R. SHRIRAM

HON'BLE MR. JUSTICE MANEESH SHARMA

Judgment

REPORTABLE

09/09/2025

(PER HON'BLE MR. MANEESH SHARMA, J.)

1. Present writ petition has been filed seeking a prayer for quashing the impugned Order-in-Original dated 18th October 2022 (Annexure-7) passed under Section 122 of the Customs Act, 1962 (hereinafter referred to as the "Act of 1962") and show cause notice dated 31st March 2008 (Annexure-1).

2. Brief facts giving rise to the present writ petition are that, petitioner is an individual, and the legal heir of one Late Shri Pawan Kumar Sharma (the sole proprietor of M/s J. Minakshi International, Jaipur) who expired on 22nd April 2021. It was

stated that on the basis of information received regarding alleged misuse of export promotion schemes, viz., drawback and DEPB by M/s J. Minakshi International, Prop. Shri Pawan Kumar Sharma, having its registered address in Jaipur, the said Shri Pawan Kumar Sharma was under investigation for alleged fraudulent exports of Readymade Garments, Leather items, Brass items, etc. Investigations and searches were carried out on 18th December 2006 by the officials of the Directorate of Revenue Intelligence, Delhi Zonal Unit, New Delhi (hereinafter referred to as the "DRI").

3. Based on the investigations above carried out against various persons for the period 2001-05, the DRI issued a notice dated 31st March 2008 to M/s J. Minakshi International, Prop. Shri Pawan Kumar Sharma; M/s Jay Ess International, Prop. Shri Ajay Kumar Sharma; M/s J. Kanishka International, Prop. Shri Karan Harsora and various other persons calling upon those parties to show cause as to why the proposed various recoveries, including redemption fine, recovery of duty drawback, interest, penalties, etc. should not be made.

4. Shri Pawan Kumar Sharma passed away on 22nd April 2021. Petitioner, was a minor (13 years of age) when the impugned Show Cause Notice was issued on 31st March 2008 to his father late Shri Pawan Kumar Sharma. It is pertinent to mention here that it is petitioner's case that he did not succeed or inherit the business of M/s J. Minakshi International even after attaining majority and, therefore, petitioner was unaware of any pending proceedings before the DRI.

5. Respondent-department after an inordinate delay of 13 years after issuance of the impugned Show Cause Notice dated 31st

March 2008 initiated the adjudication process and issued notices for personal hearing. On receipt of the same, petitioner, vide letter dated 06th December 2021 intimated to respondent-department about the death of his late father and requested to be supplied with copies of the impugned Show Cause Notice and documents relied upon therein, as he was totally unaware of any ongoing proceedings. On receipt of copy of the impugned Show Cause Notice dated 31st March 2008, petitioner wrote back to respondent-department vide letters dated 19th January 2022, 03rd June 2022, 14th June 2022 and 27th August 2022, stating therein that he is unable to identify and understand the complexity of transactions and chain of events and is thus unable to reply to the impugned Show Cause Notice; he further submitted that the liabilities do not transfer to legal heirs upon death, and requested dropping of proceedings, annexing copies of case laws and authorities supporting this contention.

6. Respondent-department, overlooking the submissions made by petitioner, passed the impugned Order-in-Original on 18th October 2022, i.e. after a lapse of more than 14 years from the date of the impugned Show Cause Notice, whereby a demand was created towards Duty Drawback and interest against M/s J. Minakshi International, M/s Jay Ess International, M/s J. Kanishka International, holding them to be recoverable from the present petitioner being legal heir of Late Shri Pawan Kumar Sharma.

7. Mr. Siddharth Ranka, counsel for petitioner, submitted that impugned Order-in-Original dated 18th October 2022 was passed after a lapse of more than 14 years from date of issuance of the impugned Show Cause Notice, i.e., 31st March 2008, without

considering submissions of petitioner. He further submits that it is settled law that where no prescribed period of limitation exists for completing an adjudication, it does not mean that such power can be exercised at any point in time. Such power has to be exercised within a reasonable period, and what constitutes 'reasonable' would depend on nature of the statute, rights and liabilities thereunder, and other relevant factors.

8. Mr. Ranka further submitted that Section 28(9) of the Act of 1962 stipulates that a show cause notice issued in normal cases needs to be adjudicated within a period of six months and a show cause notice issued involving collusion, willful mis-statement or suppression of facts, should be adjudicated within a period of one year and accordingly prayed for quashing of the impugned Order-in-Original dated 18th October 2022 and impugned Show Cause Notice dated 31st March 2008.

9. To buttress his contentions, Mr. Ranka placed reliance on the judgments by the High Court of Bombay in **Bhushan Vora Vs. Union of India**¹; **ICICI Home Finance Company Ltd. Vs. Union of India**²; **Shahaji Bhanudas Bhad Vs. The Union of India and Ors.**³; **Shreenathji Logistics Vs. Union of India**⁴ **Godrej & Boyce Mfg. Co. Ltd. Vs. Union of India**⁵; and the judgments by the High Court of Gujarat in **JBS Exports Vs. Union of India**⁶; **M/s Dhultawala Exim Pvt. Ltd. Vs. Union of India**⁷; **Kandla Exports Corp. Vs. Union of India**⁸; and **SJS International Vs. Union of India**⁹, where the show cause notice

1 2024 (9) TMI 713

2 2024 (6) TMI 682

3 2024:BHC-AS:35764-DB

4 2022 (11) TMI 709

5 2022 (9) TMI 318

6 2025 (4) TMI 382

7 2025 (1) TMI 1532

8 2025 (5) TMI 1047

9 2021 (12) TMI 1339

and impugned orders were quashed on ground of delay in adjudication.

10. Per Contra, Mr. Kinshuk Jain, counsel for respondents, submitted that the cases relied upon by petitioner stipulate a time limit for cases where there is a demand for duty, whereas, the present case is covered by Rule 16 & 16A of the Customs Excise and Service Tax Drawback Rules, 1995 ('Drawback Rules') which pertain to amount of drawback credited to the account of the exporter, or the DEPB scrips issued to the exporter. Thus the cases relied upon by petitioner are distinguishable on facts.

11. Mr. Jain further submits that the amount of drawback and DEPB scrips fraudulently availed by the exporter, i.e., M/s J. Minakshi International ultimately became a part of the estate of the Prop. late Shri Pawan Kumar Sharma and therefore, are recoverable from such estate, and after expiry of the owner of such estate, from legal representatives who inherit the same.

12. Mr. Jain also submitted that the time period prescribed under Section 28(9) of the Act of 1962 has been inserted vide Finance Act, 2018 dated 29th March 2018 and it was effective from 29th March 2018. In the instant case, Show Cause Notice has been issued before the implementation of the Finance Act, 2018. He further submitted that petitioner has an alternative remedy to assail the impugned Order-in-Original before the Appellate Authority, accordingly prayed for dismissal of the writ petition.

13. In the rejoinder, Mr. Ranka submitted that the submission of respondent qua section 28(9) of the Act of 1962, being inserted by Finance Act, 2018, is misplaced.

14. Mr. Ranka further submitted that a perusal of Rule 2(a) of the Drawback Rules clearly shows that duty drawback is defined rebate of duty or tax, therefore provisions of Section 28 would also apply. Thus, the argument put forth by counsel for respondents is untenable.

15. We have heard the submissions of counsel appearing for both sides as also considered the case law relied upon by them.

16. A bare perusal of the record reveals that investigation was carried out by the Directorate for the period 2001-05, and Show Cause Notice was issued on 31st March 2008, father of petitioner (Prop. of M/s J. Minakshi International) passed away on 22nd April 2021, and the impugned Order-in-Original has been passed on 18th October 2022 after a lapse of more than 14 years from the date of the impugned Show Cause Notice. It is also evident that it is not respondent's case that petitioner's case was transferred to call book or petitioner or his late father was informed about the same. Petitioner was neither informed that the impugned notices had been transferred to call book, nor any documents to substantiate the same have been placed on record by respondent-department.

17. The Hon'ble Supreme Court and various High Courts have repeatedly held that doctrine of reasonable time applies universally to all proceedings, and the nature of the recovery does not alter the fundamental requirement of timely adjudication.

18. A similar issue had come up for consideration before the Bombay High Court in **Godrej & Boyce Mfg.** (*supra*), wherein it was held as under:

"11.....We have no hesitation in holding that the present Petition deserves to be allowed for the following reasons, viz.,

A. The law pertaining to adjudication of show cause notices is now well settled by various judgments, in particular *Raymonds (supra)* and *Parle (supra)* of this Hon'ble Court, from which the following can be culled out, viz.,

i. Even where the statute does not prescribe a time limit for adjudication, a show cause notice must be adjudicated upon within a reasonable time;

ii. Though reasonable time is flexible and would depend upon the facts and circumstances of each case, since the object of issuing a show cause notice is to secure and recover public revenue, larger public interest requires that revenue authorities act diligently and expeditiously when adjudicating the same;

iii. Diligence would include keeping the answering party informed when a show cause notice is kept in abeyance/transferred to call book,. This serves a twofold purpose, viz.,

(a) the answering party is put to notice that proceedings are still alive and the answering party can thus safeguard the necessary evidence etc. till such time as the show cause notice is taken up for adjudication; and/or

(b) the answering party could at that stage itself contest the show cause notice and/or point out why the same should be taken up for adjudication.

iv. Failure to keep the answering party informed about the fate of the show cause notice and delay in adjudicating the same (for no fault of answering party) impinges on procedural fairness and is thus a violation of the principles of natural justice;

v. Adjudication proceedings, delayed for more than a decade (for no fault of answering party and without putting answering party on notice for the reason of delay), defeats the very purpose of issuing show cause notice/s and such delayed adjudication is bad in law;

vi. An answering party who does not hear from the authorities for more than 10 years after issuance of show cause notice and submission of reply thereto is justified in taking the view that the reply had been accepted and the authorities had given a quietus to the matter;

vii. It is not open to authorities to reopen adjudicating proceedings after a long delay without having compelling and justifiable reasons.

viii. Even where adjournments are sought frequently by the answering party, the same should not be granted liberally as this would give the impression that revenue is not interested in proceeding with the matter or rather has a vested interest in assisting the answering party.

On considering the above, we find that the facts in the present case are squarely covered by the law laid down by this Hon'ble Court especially in the case of *Parle (supra)* and *Raymond (supra)*. We find that the following facts of the present case are *ad idem* to the facts in the case of *Parle (supra)*, viz.,

i. The impugned show cause notices were resurrected after 13 years (identical period in Parle);

ii. Petitioner was never informed that the impugned notices had been transferred to call book;

iii. With the passage of time (and failure to inform) Petitioner was put in a position of irretrievable prejudice as the evidence was lost/not traceable and the concerned persons were no longer in the employment of Petitioner.

iv. No delay was occasioned on account of Petitioner. In light of the above, we find that the adjudication of the impugned notices by Respondent No. 3 in the present case was clearly bad in law and consequently the impugned order is also void. Respondent No. 3 had taken up the impugned notices for adjudication after a period of thirteen years from the date of issuance thereof and after submission of reply. This by all counts is well beyond the reasonable period of time in which Respondents were expected and required to act. Additionally, Respondents did not inform Petitioner that the impugned notices had been transferred to call book this coupled with the sudden resurrection of the impugned notices after over a decade has impinged on procedural fairness and put Petitioners in a position of irretrievable prejudice. The principles of natural justice and fair play in this case have clearly been violated by Respondents. Though Respondents have contended that the impugned notices were transferred to call book as per the circular of the Board, we find that even the Affidavit in Reply does not mention either the date on which the impugned notices were so transferred, nor does it annex a copy of the circular upon which Respondents have placed reliance. The least that was expected from Respondents was that they would have produced a copy of the relevant circular on which reliance has been placed. Another fact that is to be noted is that the circular relied upon by Respondent is dated 2003 and the impugned notices were issued in the year 2008/2009. Hence, absent production of the said circular and/or a proper explanation as to the contents of the same, Respondents contention that the impugned notices had been transferred to call book based thereon is completely unintelligible and mere ipse dixit. Thus, in the facts and circumstances of the present case, we have no hesitation in holding that Petitioner was entirely justified in concluding that Respondents had abandoned the impugned show notices.

B. Additionally, even on merit, we find that the impugned order is liable to be quashed and set aside. We find that there has been a deliberate dereliction of duty on the part of Respondent No. 3 because Respondent No. 3 has brazenly glossed over and ignored the specific submissions and case law relied upon by Petitioner pertaining to adjudication of stale show cause notices without so much as even attempting to deal with the same. The submissions made and case law relied upon by Petitioner would have gone to the root of the matter. We find that it is this conduct of Respondent No. 3 which amounts to a dereliction of duty and has resultantly occasioned grave injustice to Petitioner. Respondent No. 3 is enjoined with a duty and obligation in law to act in a fair, just and judicious manner. Respondent No. 3 has in the facts of the present case failed and neglected to exercise his jurisdiction in a transparent, fair

and just manner as required and expected of him by law. Respondent No. 3 in fact acted in an ex facie pre-determined manner with the sole objective of upholding the contention/action of the Revenue at any cost. Such conduct coupled with the failure of Respondent No. 3 to exercise jurisdiction as required by law has resulted in grave injustice and prejudice being caused to Petitioners.

C. We also find Respondents contention that Petitioner has available an alternate and equally efficacious remedy by way of Appeal also to be misplaced and of no substance in the facts and circumstances of the present case."

19. A similar view was taken by the Bombay High Court in **Shahaji Bhanudas Bhad** (*supra*), which was authored by one of us (Chief Justice), it was observed therein:

12. The issue of delay in adjudication of the show cause notice had come up before this Court in series of judgments to which either one of us was a party. This Court has, in a detailed judgment, in *Coventry Estate Pvt. Ltd. Vs. The Joint Commissioner CGST and Central Excise & Anr.* (2023) 10 Centax 38 (Bom.) quashed such show cause notice. The relevant paragraphs of the said decision reads as under:

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

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

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

20. We are also of the clear opinion that a substantial delay and inaction on the part of the department to adjudicate the show cause notice would seriously nullify the noticee's rights causing irreparable harm and prejudice to the noticee. A

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

(Emphasis Supplied)

21. In such context as to how the Courts have dealt with similar situations can be seen from some of the significant decisions on the issue. In *Sushitex Exports (India) Ltd.* (supra), a Division Bench of this Court was dealing with a case in which a show cause notice was issued on 30 April, 1997, which was not adjudicated till the petitioners filed the writ petition in the year 2020. In such context, the Court while allowing the petition, observed that the law is well settled that when a power is conferred to achieve a particular object, such power has to be exercised reasonably, rationally and with objectivity. It was observed that it would amount to an arbitrary exercise of power if proceedings initiated in 1997 are not taken to their logical conclusion even after a period of over two decades. The Court agreed with the view taken in *Parle International Ltd.* (supra) that the proceedings should be concluded within a reasonable period, and if the proceedings that are not concluded within a reasonable period, the Court considering such facts, may not allow the proceedings to be carried any further. Referring to the contentions on behalf of the respondent that the respondent should be granted the liberty to conclude the proceedings, it was observed that except for the petitioners who had approached the Court to have the impugned show-cause notice set aside invoking the writ jurisdiction of the Court of this Court, the show cause notice would have continued to gather dust. The Court observed that the petitioners, in such circumstances, cannot possibly be worse off in seeking a constitutional remedy and thereby suffer an order to facilitate conclusion of the proceedings, which was most likely to work out prejudice to them. The following are the observations as made by the Court:

"15. We are also not persuaded, at this distance of time, to agree with Mr. Jetly that the respondents should be granted liberty to conclude the proceedings. It is the petitioners who have approached the Court to have the impugned show-cause notice set aside. Had the petitioners not invoked the writ jurisdiction of this Court, the show-cause notice would have continued to gather dust. The petitioners, in such circumstances, cannot possibly be worse off for seeking a Constitutional remedy and thereby suffer an order to facilitate conclusion of the proceedings which, because

of the inordinate delay in its conclusion, is most likely to work out prejudice to them.

16. Article 14 of the Constitution of India is an admonition to the State against arbitrary action. The State action in this case is such that arbitrariness is writ large, thereby incurring the wrath of such article. It is a settled principle of law that when there is violation of a Fundamental Right, no prejudice even is required to be demonstrated."

22. In Bombay Dyeing and Manufacturing Company Limited vs. Deputy Commissioner of CGST and CX, DIV-IX, Mumbai Central GST Commissionerate, 2022 (382) E.L.T. 206 (Bom.), a co-ordinate Bench of this Court observed on the prejudice which would be caused to the assessee if for a long period the show cause notice is not adjudicated. It was held that belated hearing of the show cause notice would amount to violation of principles of natural justice. Following are the observations of the Court:

"10. 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. The respondent having issued the show cause notice, it is their duty to take the said show cause notice to its logical conclusion by adjudicating upon the said show-cause notice within a reasonable period of time. In view of the gross delay on the part of the respondent, the petitioner cannot be ade to suffer. The law laid down by the Division Bench of this Court in the case of Parle International Limited (supra), applies to the facts of this case. We do not propose to take any different view in the matter. Hearing of show-cause notice belatedly is in violation of natural justice."

23. In ATA Freight Line (I) Pvt. Ltd. (supra), a Division Bench of this Court considering the decisions in Parle International Ltd. (supra), Bhagwandas S. Tolani vs. B.C. Aggarwal & Ors., 1983 (12) E.L.T. 44 (Bom.) and Reliance Industries Ltd. (supra) held that a show cause notice issued a decade back should not 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 relevant observations of the Court are required to be noted, which reads thus:

"24. This Court in case of Parle International Ltd. (supra) after considering the identical facts and after adverting to the judgment in cases of Bhagwandas S. Tolani (supra), Sanghvi Reconditioners Pvt. Ltd. (supra) and Reliance Industries Ltd. (supra) held that 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 revenue should adjudicate the show-cause notice expeditiously and within a reasonable period. It is held that keeping the show-cause notice in the dormant list or the call book, such a plea cannot be allowed or condoned by the writ court to justify inordinate delay at the hands of the revenue. This Court was accordingly pleased to quash and set

aside the show cause notices which were pending quite some time.

25. In case of *Sushitex Exports India Ltd. (supra)*, Division Bench of this Court was pleased to quash and set aside the show cause notices which remained pending for adjudication from 1997. This Court considered the fact that though the petitioner therein was called for hearing in the year 2006, no final order was passed immediately after hearing was granted to the petitioner. It is held that the respondents seem to have slipped into deep slumber thereafter. This Court while quashing and setting aside the show cause notices which were not decided after long delay was pleased to grant consequential relief to the petitioner therein by directing the respondents to return the amounts paid by the petitioner under protest during the course of investigation with interest @ 12% p.a."

(Emphasis Supplied)

20. This well settled law was once again reiterated by the High Court of Gujarat in **M/s Dhultawala Exim Pvt. Ltd (supra)**, wherein it was held as under:

"10.1 This Court in the case of *Siddhi Vinayak Syntex Pvt. Ltd. v. Union of India (Supra)*, held that a matter cannot be revived after 17 years when there is no appropriate reason for the delay and hence, the Show Cause Notice was quashed.

10.2 The Hon'ble Bombay High Court, in the case of, *Shirish Harshavadan Shah v. Deputy Director Enforcement Directorate, Mumbai (Supra)*, held that in absence for reason of delay in adjudication, then opening of the matter after such a lapse cannot be allowed, as it will cause serious detriment and prejudice to the petitioner.

10.3 The Hon'ble Delhi High Court, in the case of, *R.M. Malhotra v. Enforcement Directorate (Supra)*, held that revival of the proceedings after a time gap of ten years, without notice of hearing disclosing any reason for the delay, is not merely a matter of impropriety, the respondents were under the duty to disclose what compulsions held up the adjudicatory process for so long. In absence of such explanation, the revival of the proceedings would be unlawful and arbitrary.

10.4 The Hon'ble Orissa High Court, in the case of, *M/s. Maxcare Laboratories Ltd. v. Joint Commissioner CGST, Central Excise, Customs, Bhubaneswar and others (Supra)*, held that revival of the proceedings after an inordinate delay is contrary to the concept of speedy disposal of Show Cause Notice, when proper reason for the delay is not provided.

10.5 This Court, in the case of *M/s. Dewas Soya Limited (Supra)* has held as under-

8. Having heard learned advocates for the respective parties and considering the facts of the case it is not in dispute that the petitioner did not issue the ARE2 while removing the DOC manufactured by using the Hexane without payment of Central Excise duty. However, as held by me Commissioner (Appeals)

such non issuance of the ARE-2 would not be for removal of the DOG manufactured out of the duty free procured Hexane by availing the benefit under Rule-19(2) of the Rules would not make any difference as there is no intention established by the Adjudicating Authority and the only allegation levelled against the petitioner stand on pre-condition that the petitioner exporter had knowingly or intentionally claimed the duty drawback erroneously. However, the Commissioner (Appeals) has categorically held that the legality of claiming custom portion of the drawback by the merchant exporter, the allegation made by the Adjudicating Authority was devoid of any merit and there was no finding or discussion by the Adjudicating Authority where any conclusive evidence as how non-issuance of ARE-2 by the petitioner would tantamount to be intentional involvement in abetment of erroneous claim of the drawback by the exporter which purely relates to the custom portion of the drawback when the exporter manufacturer is not unduly getting the double benefit. This aspect of the entire issue of removal of the goods without issuing ARE-2 is missed out by the Revisional Authority and the Revisional Authority has placed reliance only on the non-issuance of the ARE-2 and the likelihood of the exporter getting double benefit of duty drawback in case when the percentage of the duty drawback also includes the Central Excise portion. We are of the opinion that the Revisional Authority while Considering the aspect in the facts of the case of the petitioner has not taken into consideration the fact that the rate of duty drawback is 1% in the facts of the case which relates to the custom portion only and not the Central Excise portion and therefore, the exporter did not get any double benefit in the facts of the case. In such circumstances, it cannot be said that the petitioner has committed any breach of the Rules by issuing the DOC without issuing ARE-2. In such circumstances, the impugned order passed by the Revisional Authority is not sustainable and is accordingly, quashed and set aside so far as the petitioner is concerned with regard to the levy of penalty which is deleted by the Commissioner of Customs (Appeals).

11. This Court finds itself in a complete agreement with the aforesaid position in law as applicable to the facts of the present case. Accordingly, the show cause notices referred to in the chart below Paragraph No. 67 and 7 as well as the Orders-In-Original dated 24.03.2012, 07.03.2013 and 31.03.2022 and as also the Revision Orders dated 09.09.2021 and 08.03.2021 are hereby quashed and set aside. Rule is made absolute to the aforesaid extent. No order as to costs."

21. The maxim *lex dilationes abhorret*, i.e., law abhors delay has not lost its temper over the years. The 14-year delay in adjudication is an antithesis to the norms of a lawful, fair and effective quasi judicial adjudication. Courts have consistently held that inordinate delay in adjudication of notice violates principles of natural justice as where no period of limitation is prescribed, power cannot be exercised indefinitely. Respondent has failed to

provide any cogent explanation for the inordinate delay of 14 years. Moreover, petitioner was never informed about the matter being transferred to call book, nor was there any communication regarding the status of proceedings for a good 13 years period. This complete lack of transparency and procedural non-compliance renders the entire proceedings vitiated by arbitrariness.

22. We also find that there has been a deliberate dereliction of duty on the part of respondents as they have brazenly glossed over and ignored the specific submissions and case law relied upon by petitioner pertaining to adjudication of stale Show Cause Notice without so much as even attempting to deal with the same. It reflects that respondents have acted in an *ex facie* pre-determined manner with the sole objective of upholding the action of the Revenue at any cost.

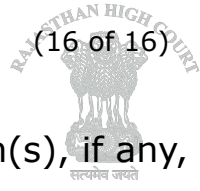
23. Lastly, as regards the objection raised by counsel for respondents regarding alternative remedy being available to petitioner, we are of the opinion that even though the remedy of appeal is available, petitioner is not required to exercise this alternate remedy, in the facts and circumstances of the present case. The present writ petition is maintainable as the challenge in the present writ petition arises on account of the contravention of the rules of procedural fairness by respondent. This conduct of respondent, as already held by us, has resulted in grave prejudice being caused to petitioner and amounts to a violation of the principles of natural justice. Thus, the present writ petition is squarely maintainable and petitioner does not have to be relegated to the remedy of appeal even though available.

24. In view of the considerations above, judgments relied upon, and the fact that: (i) the impugned Order-in-Original was passed after a lapse of more than 14 years from the date of the impugned Show Cause Notice; (ii) there was complete silence from respondent-department for well over a decade; (iii) there is no explanation by respondent-department for the inordinate delay in the adjudication of the impugned Show Cause Notice; (iv) petitioner was neither informed that the impugned Show Cause Notice was transferred to call book, nor any documents to substantiate the same have been placed on record by respondent-department; (v) the proceedings were suddenly revived after a period of 13 years; (vi) the inordinate delay is in no manner attributable to petitioner; and (vii) respondents have ignored the specific submissions and case law relied upon by Petitioner, we find that the adjudication of the impugned Show Cause Notice by respondent-department is clearly bad in law and consequently the impugned Order-in-Original is also void, as respondent-department had taken up the impugned Show Cause Notice after a period of 13 years from the issuance thereof.

25. Thus, in the facts and circumstances of the case, we have no hesitation in holding that petitioner was entirely justified in concluding that respondents had abandoned the impugned Show Cause Notice.

26. For the reasons stated above, Rule is made absolute. Petition is allowed in terms of prayer clause (a) which reads thus:

a) Issue an appropriate writ, order or direction in the nature of mandamus directing to quash, set-aside, rescind, cancel the impugned Order-In-Original dated 18.10.2022 (Annexure 7) passed u/s. 122 of the Act and impugned show cause notice dated 31.03.2008 (Annexure 1) qua the petitioner.



27. All pending application(s), if any, stand disposed.

(MANEESH SHARMA),J

(K.R. SHRIRAM),CJ

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