2026:DHC:7503-DB

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

% ***Judgment reserved on: 19.08.2026***

Judgment pronounced on: 07.09.2026

Judgment uploaded on: 07.09.2026

\# **CNR No. DHC010260632025**

\+ W.P.(C) 5796/2025 & CM APPL. 26401/2025

GKEM INTERNATIONAL PVT LTD & ORS. ....Petitioner

Through: Mr. Deepak Gandhi and Ms. Ida Bhatnagar, Advs.

versus

COMMISSIONER OF CUSTOMS ICD PPG AND OTHERS ICDS .....Respondent

Through: Mr. Arjun Malik, SSC along with Ms. Mayuri Makhija, Adv. for R-1.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MS. JUSTICE SHAIL JAIN

<u>J U D G M E N T</u>

<u>ANIL KSHETARPAL, J.</u>

1. By way of the present Petition, the Petitioners seek declaration of the Show Cause Notice (SCN) dated 24.06.2022, as *non-est* in view of Section 28(9) of the Customs Act, 1962 [hereinafter referred to as 'Act of 1962']. Additionally, in the aforesaid backdrop, the Petitioners also pray for recall of the Order-in-Original (OIO) dated 29.11.2024, inasmuch as the Impugned SCN upon which it came to be premised was beyond the prescribed period of limitation. It is not in dispute that the Petitioners have an alternate remedy of Appeal against the Impugned OIO. However, it is claimed that the OIO was passed beyond the permissible period, hence, this Court should quash the same in exercise of its writ jurisdiction.

A. BRIEF FACTUAL BACKGROUND

2. The Petitioners herein are engaged in the business of importing duty free raw materials, in form of Electorlytic Copper Rods and exporting the same after value addition, i.e., by manufacturing Copper Wire/Power Cables. To carry out the aforesaid business, Petitioner Nos.1 and 2 availed duty-free import benefits under Advance Authorisation Licences (AAL) issued by Director General of Foreign Trade (DGFT) under Notification No. 18/2015-Cus dated 01.04.2015 [hereinafter referred to as 'Notification 2015'].

3. In pursuance thereof, the Petitioner No.2 was issued four such licences between 16.12.2019 and 03.06.2020, while Petitioner No.1 was issued five licences between 12.03.2020 and 19.08.2020. In accordance with the terms of AAL, the raw material had to be imported within one year of the license, and the furnished goods manufactured therefrom had to be exported within eighteen (18) months of import. Additionally, the importers were also to execute a bond in favour of the President of India, by which it undertook to fulfil the Export Obligation (EO) and furnish proof of the same within thirty days of expiry of the Export Obligation Period (EOP).

Genesis of the dispute

4. The genesis of the present dispute arises out of information being received by the Customs Preventive Commissionerate, Delhi. Following which an investigation was conducted, and it was revealed that the Petitioner Nos.1 and 2, instead of manufacturing and exporting the finished goods as mandated under the AAL, diverted the

duty-free imported raw material into the domestic market, in the guise of job work, without fulfilling the stipulated EO. The said action of the Petitioners was treated as being violative of condition (x), the actual user condition, of Notification 2015.

5. During the course of investigation, it was further revealed that the firms to which the goods were purportedly sent for job work existed only on paper. Moreover, as per statements recorded under Section 108 of the Act of 1962 during investigation, it was admitted that the imported materials had not been used for manufacture of export goods and as such the EO had not been fulfilled.

6. It is on the basis of the aforestated that the Impugned SCN came to be issued against the Petitioners, calling upon them to show cause under Section 28(4) read with Section 28AAA of the Act of 1962, with reference to Notification No.96/2009-Cus dated 11.09.2009 and Notification 2015, as to why differential customs duty of Rs. 11,11,45,550/- (against Petitioner No.1) and Rs.9,06,17,303/- (against Petitioner No.2), cumulatively about Rs. 20.18 crore should not be demanded/recovered, together with applicable interest, in terms of the bonds executed by them.

Prior litigation before this Court

7. Notably, prior to the issuance of Impugned SCN, the Petitioner Nos.1 and 2, through Petitioner No.3 had approached this Court on two occasions in connection with the same AAL and the underlying EO.

8. The first Petition bearing No. W.P.(C) 3686/2021 captioned ***Rajesh Gupta & Ors. v DGFT***, was filed seeking directions to the DGFT to permit the Petitioners to complete their EO by purchasing additional copper of the same grade from the open market, and to extend the time limit of the licences granted to them. However, the same came to dismissed as withdrawn by Order dated 23.03.2021, while granting liberty to make a representation before the DGFT, with a direction to DGFT to consider and decide the same within 45 days.

9. Following the aforesaid Order, the Petitioners herein filed representations dated 07.04.2021 and 12.04.2021. In the interregnum, the Petitioners filed W.P.(C) 5756/2021 captioned ***Rajesh Gupta & Ors. v DGFT***, seeking extension of EOP by a further period of twelve (12) months on account of the COVID-19 pandemic and the resultant force majeure circumstances; a restraint on coercive recovery of customs duty under Section 2.54 of Foreign Trade Policy (FTP) during the extended period; permission to make good any shortfall in raw material by procuring copper from the open market at their own cost; and parity with the relaxations granted by the Government in respect of statutory and contractual obligations during the pandemic and lockdown.

10. This Court by way of its Order dated 03.06.2021, recorded that the DGFT shall not initiate any coercive action against the Petitioners until the final decision is rendered in this regard. Subsequently, the DGFT rejected the representations made by the Petitioners by way of its Order dated 23.06.2021. Following which, the said Petition was also dismissed on 08.12.2023, while noting that the DGFT had duly

considered and disposed of the Petitioners' representations in accordance with the applicable provisions of the FTP and Handbook of Procedures.

11. Additionally, it was also noted that the request to procure copper from the domestic market to make good the shortfall was rightly rejected in view of the "Actual User" condition governing AAL. The Court further held that, in exercise of jurisdiction under Article 226 of the Constitution, it was concerned with the decision-making process and not with re-appreciation of the merits of the decision. Finding the decision-making process fair and no violation of the applicable statutory or policy provisions, the Court declined to interfere with the DGFT Order dated 23.06.2021.

12. In the intervening period of 12.07.2023 till passing of Impugned OIO dated 29.11.2024, the adjudication proceedings before the Respondent proceeded as follows. On 12.07.2023, the Petitioners were informed of a 08-month extension purportedly granted by the Chief Commissioner under the first proviso to Section 28(9) of the Act of 1962 and were granted a personal hearing on 31.07.2023. At the subsequent hearing on 16.08.2023, the Petitioners sought deferment of proceedings on account of pendency of W.P.(C) 5756/2021 and the Interim Order dated 03.06.2021 passed by this Court. Consequently, on 18.08.2023, the Impugned SCN was transferred to the call book under Section 28(9A)(b) of the Act of 1962.

13. However, upon dismissal of W.P.(C) 5756/2021, the proceedings came to be revived culminating into the Impugned OIO, whereby the Adjudicating Authority (AA) confirmed the proposed

demand of differential customs duty of Rs.11,11,45,550/- against Petitioner No.1 and Rs.9,06,17,303/- against Petitioner No.2, together with applicable interest, under Sections 28(4), 28AA and 28AAA of the Act of 1962. Aggrieved thereby, the Petitioners filed written representations dated 11.02.2025 before the AA, seeking recall of the order, *inter alia*, on the ground that the Impugned SCN had become *non-est* and the adjudication proceedings were barred by limitation under Sections 28(9) and 28(9A) of the Act of 1962.

14. It is against the above factual backdrop that the Petitioners have approached this Court seeking our indulgence.

B. SUBMISSION ON BEHALF OF THE PARTIES

15. Before proceeding to deal with the arguments advanced by the learned counsel representing the Parties, we deem it appropriate to note that no arguments were advanced by learned counsel representing the Petitioner on the merits of case. The challenge in the present Petition, rests solely upon the question of limitation/delayed adjudication undertaken by the AA under Section 28(9) read with Section 28(9A) of the Act of 1962.

16. Learned counsel representing the Petitioners has made the following submissions:

16.1 It is argued that as per Section 28(9)(b) of the Act of 1962, the Impugned SCN dated 24.06.2022 was required to be adjudicated within one year, i.e. by 24.06.2023. However, no determination or notice of personal hearing was made by the AA, with the first such communication having been issued only on 12.07.2023.

16.2 It is contended that the eight (08) months extension granted under the first proviso to Section 28(9) of the Act of 1962, was itself invalid, no opportunity of hearing was afforded to them, and no reasons were recorded for the failure of the proper officer to adjudicate within the prescribed period. It is urged that, in any event, even assuming the extension to be valid, the extended period expired on 24.02.2024, whereas the Impugned OIO was passed only on 29.11.2024.

16.3 Further, it is argued that the transfer of the Impugned SCN to the Call Book on 18.08.2023 did not suspend or extend the statutory period, as the Petitioners were neither duly intimated of such transfer in terms of Para 9.4 of Master Circular No. 1053/02/2017-CX dated 10.03.2017 [hereinafter referred to as 'Circular of 2017'] nor furnished the reasons for non-determination as contemplated under Section 28(9A) of the Act of 1962. Consequently, the period from 18.08.2023 to 08.12.2023 could not be excluded in computing limitation.

16.4 In support of his submissions, reliance has been placed on ***State of Punjab v. Bhatinda District Coop. Milk P. Union Ltd.***[1], to argue that limitation goes to the jurisdiction of the authority and may be examined in writ proceedings notwithstanding an alternate remedy.

16.5 Further, reliance has also been placed on ***Shri Ram Agro Chemical Pvt. Ltd. v. Union of India & Ors.***[2] and ***Vos Technologies***

[1] (2007) 11 SCR
[2] 2019 SCC OnLine P&H 4918

Private Limited v. Principal Additional Director General[3] to argue that an extension under Section 28(9) of the Act of 1962 must be preceded by disclosure of reasons for the delay and an opportunity of hearing, and the extension must be duly communicated; failure to comply with the statutory requirements, including those under Section 28(9A) of the Act of 1962, renders the proceedings time-barred.

17. *Per contra*, learned counsel representing the Respondents have made the following submissions:

17.1 At the outset, a preliminary objection as to the maintainability of the present Petition, has been raised. It is argued that in view of the efficacious alternate remedy of appeal under the Customs Act, 1962, and on account of lack of any argument pertaining to error of law or jurisdiction, no interference is warranted by this Court.

17.2. Learned counsel, on merits, has argued that the diversion of duty-free imported raw material to the domestic market without fulfilling the EO under the AAL and in breach of the actual-user condition under Notification 2015, stands admitted in the statements recorded under Section 108 of the Act of 1962.

17.3 It is contended that the Interim Order dated 03.06.2021, restraining coercive recovery, was in force prior to issuance of the Impugned SCN dated 24.06.2022. Consequently, by virtue of Sections 28(9A)(a) and (b) of the Act of 1962, the proceedings were liable to be placed in the Call Book from inception, and no separate intimation of extension was necessary, particularly when the pendency of the

[3] 2024 SCC OnLine Del 8756

writ petition and the interim order were brought to the Department's notice by the Petitioners' counsel only on 16.08.2023.

17.4 It is further argued that in terms of Section 28(9A) of the Act of 1962, the period prescribed under Section 28(9) commenced only upon cessation of the reason for non-determination, i.e. on 08.12.2023, when W.P.(C) 5756/2021 was dismissed. Therefore, the Impugned OIO dated 29.11.2024 was, within the permissible period ending on 07.12.2024.

17.5 It is argued that despite being afforded repeated opportunities of hearing on 25.07.2023, 16.08.2023, 13.09.2024, 15.10.2024 and 04.11.2024, the Petitioners either failed to appear or sought adjournments on the above-mentioned dates. Accordingly, the delay cannot be attributed to the Respondent, in order to challenge the Adjudication proceedings undertaken.

17.6 Reliance is placed on ***Collector of Central Excise, New Delhi v. Bhagsons Paint Industry (India)***[4]***, Commissioner, GST***, ***Central Excise, Commissionerate-II, Chandigarh v. Swati Menthol and Allied Chemicals Ltd.***[5]***,*** and ***CCE v. M/s Gujarat Ambuja Exports Ltd.***[6]***,*** to contend that delay by itself does not necessarily bar adjudication and, where no specific limitation applies, the question of reasonable time must be determined having regard to the facts of each case.

C. <u>ANALYSIS AND FINDINGS:</u>

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[4] 2003 (158) E.L.T. 129 (S.C.)
[5] 2023 (385) E.L.T. 642 (S.C.)
[6] (2016) 15 SCC 208

18. Before proceeding to examine the controversy before us, we deem it appropriate to reproduce the relevant provisions of the Act of 1962 forming basis of our analysis, which reads as under:

> ***"28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded****.—*
>
> *(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.]"*

19. At the outset, it is necessary to delineate that the present Petition raises a challenge to the Impugned OIO principally, and in substance exclusively, on the ground that the same came to be passed beyond the period prescribed under Sections 28(9) and 28(9A) Act of 1962, and is, therefore, without jurisdiction. Significantly, the Petitioners do not assail the substantive findings recorded by the AA under Sections 28(4), 28AA or 28AAA of the Act of 1962. They have neither disputed, on merits, the allegations concerning diversion of duty-free imported material, non-fulfilment of EOs, or breach of the conditions governing the Advance Authorisations, nor have they identified any specific factual or evidentiary error in the OIO.

20. The same position emerges from the representation dated 11.02.2025 seeking recall of the Impugned OIO, which is directed substantially towards limitation, the validity of the extension granted under the statutory framework and the transfer of the proceedings to the Call Book. Therefore, the controversy before us, is a narrow one and principally concerns whether the Impugned OIO was rendered beyond the statutory period so as to suffer from want of jurisdiction.

21. Before examining the statutory computation, we must highlight that during the course of arguments, learned counsel representing the Petitioners, has sought to place reliance upon Supreme Court's Order dated 02.05.2025 passed in SLP(C) No. 5392/2025 captioned ***Union of India & Ors. v. GMR Airport Infrastructure Ltd***. Relying upon this Order, the Petitioners have sought deferment of the present proceedings in view of the following direction issued:

"*7. According to Mr. N. Venkataraman, the impugned judgment and order passed by the High Court of Delhi needs to be suspended from its operation as the same is creating lot of problems for the Revenue.*

8. He pointed out that almost 250 matters came to be disposed of

by the Tribunal following the judgment of the High Court of Delhi.

*9. **Since we are looking into the larger issues involved in this matter, we may only say that if any matter comes up for hearing before the Tribunal or any of the High Courts on the subject in question, the hearing may be deferred till we take an appropriate call in the matter**.*

10. List the matter after Summer Vacation."

22. However, we may also highlight that in its written pleadings, the Petitioners have sought to rely upon the judgment of this Court in ***Vos Technologies*** *(Supra)*, which is a subject matter of consideration before the Supreme Court in ***GMR Airport*** *(Supra)*, and it was in furtherance of this consideration that the Order dated 02.05.2025 came to be passed. In view thereof, we shall now proceed to examine the *lis* adjudicated by this Court in ***Vos Technologies*** *(Supra)*, to cull out as to whether the said judgment, and by extension the Order of the Supreme Court, will be applicable to facts and circumstances, requiring deferment of the present proceedings.

23. This Court in ***Vos Technologies*** *(Supra)*, was dealing with a batch of Petitions arising out of delayed adjudication in matters pertaining to the Act of 1962 and Central Goods and Services Tax, 2017. It is in this backdrop that this Court recorded the principal ground that arose before it, which is as follows:

"*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.*"

24. The aforestated makes it evident that the Court was concerned with the application of the principle of a "reasonable period" to adjudicatory proceedings which had remained pending for an inordinately long duration. Since the dispute before us arises out of Act of 1962, we shall proceed to examine the above-stated judgment in this limited sense.

25. In substance, the Court therein was confronted with SCNs which had remained dormant for approximately 15 to 18 years, followed by repeated and mechanical transfers to the Call Book without contemporaneous reasons being recorded or communicated to the noticees. The Court found that such prolonged and unexplained inaction defeated the legislative object of expeditious adjudication and effectively converted the Call Book into a mechanism for indefinite and unaccountable suspension of proceedings.

26. It is against the aforesaid factual backdrop that the Court examined Section 28 of the Act of 1962. However, the factual substratum of ***Vos Technologies*** *(Supra)* is materially distinct from that arising in the present case inasmuch as the Impugned SCN, came to be issued subsequent to the Finance Act, 2018, which brought substantial changes to Section 28(9) of the Act of 1962. The amendment deleted the expression '*where it is possible to do so*', introduced second proviso to sub-section (9), incorporating a deeming consequence where adjudication is not completed within the

prescribed period, and inserted sub-section (9A), specifically providing for circumstances in which determination under sub-section (8) cannot be completed for reasons enumerated therein.

27. On the contrary, the SCNs considered in ***Vos Technologies*** *(Supra)* had been issued prior to 29.03.2018 and, by virtue of Explanation 4 to Section 28, continued to be governed by the unamended Section 28(9) of the Act of 1962, meaning thereby the 2018 amendment did not itself govern the timeline applicable to those proceedings. Consequently, the decision rested upon the *'reasonable period'* principle applicable under the earlier statutory regime, coupled with the Respondents' failure to justify mechanical and repeated transfers to the call book without recorded reasons or communication to the noticees.

28. It is for these reasons that the findings in ***Vos Technologies*** *(Supra)*, cannot be said to govern the present proceedings so as to warrant deferment thereof in terms of the Supreme Court's order dated 02.05.2025. It is also relevant to note that the deferment of proceedings directed by the Supreme Court was occasioned by the fact that nearly 250 matters had been disposed of by the Tribunal by placing reliance upon ***Vos Technologies*** *(Supra)*. It was in this limited factual backdrop that the direction of deferment came to be issued. Having already distinguished the said judgment on the facts and circumstances arising in the present case, we find no reason to defer the present proceedings merely on the strength of the aforesaid direction.

29. Turning now to the statutory timeline applicable to the facts of the present case, it is noted that the Impugned SCN came to be issued on 24.06.2022 under Section 28(4) of the Act of 1962. Since the proceedings fall under sub-section (4), the applicable timeline under Section 28(9) is that prescribed by clause (b) thereof, namely, one (01) year from the date of notice, extendable by a further period of one (01) year under the First Proviso. An extension of eight (08) months granted by the Competent Authority under the First Proviso to Section 28(9) was communicated to the Petitioners *vide* letter dated 12.07.2023. Accordingly, absent the operation of Section 28(9A), the proceedings were required to be concluded, as extended, by 24.06.2024.

30. However, the subsequent course of events assumes determinative significance, since in the intervening period, the Petitioners themselves, by way of a written reply dated 14.08.2023, sought deferment of adjudication on account of pendency of W.P.(C) 5756/2021 before this Court and the interim Order dated 03.06.2021 operating therein, whereby the Respondent Department had been directed to refrain from taking any coercive action. In the said reply, the Petitioners expressly reserved their right to furnish a detailed reply upon disposal of the said writ petition. Pursuant thereto, the proceedings were transferred to the Call Book on 18.08.2023.

31. The Petitioners contend that such transfer neither suspended nor extended the statutory period, since they were not separately intimated of the Call Book transfer in terms of paragraph 9.4 of Circular of 2017, nor furnished the reasons for non-determination contemplated

under Section 28(9A) of the Act of 1962. Consequently, it is urged that the period from 18.08.2023 to 08.12.2023 must be counted for limitation. However, this submission proceeds upon a conflation of the administrative act of transferring a matter to the Call Book with the statutory consequence flowing from Section 28(9A) of the Act of 1962.

32. Since the proceedings at this stage are found to be governed by Section 28(9A) of the Act of 1962, we shall now proceed to examine the requirements of the said provision, in order to determine whether the timeline prescribed under the statutory regime was duly adhered to by the Respondents.

33. Section 28(9A) is a non-obstante provision, dealing with two facets. *Firstly*, it addresses a situation where the proper officer is unable to determine the amount of duty or interest under sub-section (8) for any of the reasons enumerated in clauses (a) to (d). *Secondly*, where such a circumstance arises, the reasons for non-determination are to be communicated to the person concerned, and the period prescribed under sub-section (9) is to be reckoned from the date on which the relevant circumstance ceases to exist. Therefore, the provision does not, make the Call Book transfer itself the source of any extension; rather, the statutory consequence flows from the existence of the circumstance contemplated hereinabove.

34. In the present case, the circumstance contemplated under clause (b) of Section 28(9A) of the Act of 1962 is squarely attracted, inasmuch as the issue forming the subject matter of W.P.(C) 5756/2021, namely, Petitioners' request for extension of EOP, and

permission to procure copper from the open market in substitution of the duty-free imported inputs, was directly germane to the adjudication, since the Petitioners' liability to differential duty was, *inter alia*, dependent upon compliance with the conditions governing the relevant AAL. As a consequence, the pendency of the said writ proceedings, coupled with the interim protection operating therein, constituted the circumstance which prevented the proper officer from proceeding to a final determination under Section 28(8) of the Act of 1962.

35. Thus, the Call Book entry of 18.08.2023 was merely consequential to the circumstance already placed before the AA by the Petitioners themselves. The Call Book was not the source of the statutory exclusion; it was the administrative manifestation of the fact that the adjudication could not, at that stage, appropriately proceed. Therefore, the legal consequence must be traced to Section 28(9A) of the Act of 1962 and not to the mere fact of transfer to the Call Book.

36. In these circumstances, the Petitioners' reliance upon the Paragraph 9.4 Circular of 2017 does not lead to a different conclusion. The Circular only regulates the administrative manner in which matters transferred to the Call Book are to be dealt with and is intended to secure transparency and accountability. However, absent an express statutory consequence making such communication a condition precedent to the operation of Section 28(9A), an administrative instruction cannot override or displace the statutory consequence which follows upon the existence of a circumstance expressly contemplated by the Legislature.

37. The requirement of communication under Section 28(9A) of the Act of 1962 must, however, also be considered in the cumulative factual matrix arising in the present controversy. That requirement, in its terms, casts an obligation upon the proper officer to inform the person concerned of the reason for non-determination, its legislative purpose being to ensure that the noticee is not left unaware of the circumstance which has prevented determination under Section 28(8) of the Act of 1962. In the ordinary case, formal intimation by the proper officer would be necessary to discharge this obligation.

38. However, in the present case, this requirement stands substantially satisfied, and indeed its underlying purpose stands fully served, since it was the Petitioners themselves who brought to the notice of the Respondents the pendency of W.P.(C) 5756/2021 and the interim order passed therein and identified that circumstance as the very ground for seeking deferment. Therefore, the Petitioners were, fully cognisant of the circumstance which impeded the AA from proceeding with the determination, more so than would ordinarily follow from a formal communication issued by the officer.

39. Having themselves relied upon the pendency of the said proceedings and the protection operating thereunder, the Petitioners cannot be considered to have been unaware of the same. Therefore, this is not a case of literal compliance with the communication requirement in the sense of intimation issuing from the proper officer; it is a case where the object of that requirement stands independently and fully achieved by the noticee's own conduct.

40. The position would undoubtedly be different where the Department sought to rely upon an undisclosed circumstance or where proceedings were kept dormant for years without the noticee being apprised of the reason for such inaction. That, however, is not the case before us. The circumstance relied upon by the Respondents was neither subsequently devised nor retrospectively invoked; it was the very circumstance expressly pleaded and relied upon by the Petitioners themselves. Therefore, it is the underlying statutory circumstance, and not the administrative fact of Call Book transfer, which governs the computation.

41. In the present case, the circumstance falling within clause (b) ceased to exist on 08.12.2023, when W.P.(C) 5756/2021 came to be dismissed by this Court. Consequently, it is from 08.12.2023 that the 02 years statutory period contemplated under sub-section (9) is required to be reckoned.

42. On such computation, the base period of one year under clause (b) of Section 28(9) of the Act of 1962 would have expired on 08.12.2024. Since the Impugned OIO came to be passed on 29.11.2024, within this unextended base period, it is unnecessary for us to examine whether, or on what basis, the extension earlier granted under the First Proviso would attach to the freshly reckoned period commencing 08.12.2023. The time during which the proceedings remained impeded by the circumstance contemplated under clause (b) of Section 28(9A) could not, in any event, be reckoned against the Respondents. The statutory clock, properly computed, commenced only upon cessation of that circumstance on 08.12.2023; accordingly,

the Impugned OIO was passed within the period prescribed by law, and the Petitioners' challenge founded upon alleged expiry of the statutory timeline is without merit.

43. Having concluded that the Impugned OIO does not suffer from want of jurisdiction on grounds of limitation, we consider it appropriate to briefly notice, as an independent and alternative ground, certain aspects of the Petitioners' conduct which would in any event disentitle them to discretionary relief under Article 226 of the Constitution, a ground distinct from, and not necessary to, our finding on limitation above.

44. The jurisdiction exercised by a writ Court under Article 226 of the Constitution is equitable and discretionary in nature and cannot be claimed as a matter of right. Ordinarily, where an efficacious alternative statutory remedy is available, the Court would be slow to exercise its writ jurisdiction, save in recognised exceptions. The exercise of such jurisdiction may also be declined where the conduct of the Petitioner is such that equitable relief ought not to be granted, including where material facts have not been candidly disclosed.

45. In this regard, we note that the Petitioners have not, at any stage of the present proceedings, sought to controvert the substantive findings recorded in the Impugned OIO concerning diversion of the duty-free imported goods, breach of the conditions governing the Advance Authorisations, and consequent fraudulent evasion of duty, findings which, on the record, resulted in a duty demand of approximately Rs. 20.18 crore together with interest, redemption fines and penalties. Their reply dated 14.08.2023 merely sought deferment

of adjudication pending W.P.(C) 5756/2021 and expressly reserved the right to file a substantive reply thereafter; no such reply was, however, filed even after that writ petition came to be dismissed on 08.12.2023.

46. Further, and it is of particular significance, that the Impugned OIO records a position also reflected in the Counter Affidavit, that the dismissal of W.P.(C) 5756/2021 was not communicated to the AA by the Petitioners, and that the Respondent came to learn of it only in the course of its own review of matters pending in the Call Book. Having sought deferment on the express basis of the pendency of that Petition and having represented that a substantive reply would follow upon its disposal, the Petitioners did not themselves intimate the AA of the cessation of that very circumstance.

47. This conduct is relevant not to the statutory computation, which stands concluded above, but to the equitable discretion of this Court. It is in this limited context that the principle of approbate and reprobate stands attracted. A party cannot, having invoked a circumstance as the basis for keeping adjudication in abeyance, and having chosen not to answer the substantive allegations during that period, subsequently seek to derive an equitable advantage, by way of extraordinary writ relief on limitation grounds alone, from the very passage of time occasioned by the deferment it had itself sought.

D. CONCLUSION:

48. For the foregoing reasons and having found that the Impugned OIO was passed within the period prescribed under Sections 28(9) and

28(9A) of the Act of 1962, and, in any event and independently, having regard to the availability of an efficacious alternative statutory remedy and the circumstances surrounding the Petitioners' conduct during the adjudication proceedings, we are not inclined to interfere with the Impugned OIO/ Impugned SCN.

49. Accordingly, the present Petition, along with pending application, is dismissed.

50. The Petitioners shall be at liberty to avail the statutory appellate remedy available to them in accordance with law and to raise therein all grounds and contentions available to them in respect of the merits of the case.

51. It is clarified that no observation contained herein shall prejudice the consideration of such contentions by the competent Appellate Authority.

ANIL KSHETARPAL, J.

SHAIL JAIN, J.

SEPTEMBER 07, 2026
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