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* IN THE HIGH COURT OF DELHI AT NEW DELHI
% ***Judgment reserved on: 16.09.2026***
Judgment pronounced on: 28.09.2026
Judgment uploaded on: 28.09.2026

\# **CNR No. DLHC010229892026**
\+ W.P.(C) 7004/2026 and CM APPL. 34395/2026
VISHAL OIL AND LUBRICANTS CO. .....Petitioner
Through: Mr. Rohit Kapur, Adv.

versus

THE COMMISSIONER OF CUSTOMS (IMPORT)
.....Respondent
Through: Mr. Piyush Beriwal, Ms. Ruchita Srivastava, Mr. Sparsh Jain, Advs.

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

JUDGMENT

ANIL KSHETARPAL, J.:

1. Through the present Petition, the Petitioner seeks a direction to the Respondent to waive the interest/late charges reflected in the Customs EDI System in respect of the aforesaid Bill of Entry.

2. The issue which arises for consideration in the present Petition is whether the Petitioner can be saddled with the entire amount of interest reflected in the Customs EDI System in respect of Bill of Entry No. 9174780 dated 08.05.2015, including the period during which the imported goods remained seized and the proceedings

arising out of the Show Cause Notice dated 15.09.2015 remained pending before the Customs authorities for nearly eight (08) long years.

FACTUAL MATRIX:

3. In order to appreciate the controversy involved in the present Petition, the relevant facts, in brief, are required to be noticed.

4. The Petitioner is a proprietorship concern of Mr. Dalip Singh Rathore and is stated to be engaged in the business of import and sale of petroleum products. On 08.05.2015, the Petitioner filed Bill of Entry No. 9174780 at Inland Container Depot, Tughlakabad, New Delhi, through its Customs Broker, declaring the imported goods as "Bitumen" falling under Customs Tariff Heading 27132000. The declared value of the goods was Rs.36,73,758/-.

5. The Bill of Entry was assessed on 08/09.05.2015 and customs duty of Rs.9,22,210/- was assessed thereon. The consignment, however, was put on hold by the SIIB (Import), ICD Tughlakabad for physical examination. Upon examination conducted on 13.05.2015 and 14.05.2015, it was found that out of the 90 drums declared, 80 drums contained a black-coloured substance whereas 10 drums were empty. Representative samples were drawn and forwarded to the Central Revenue Control Laboratory, Pusa, New Delhi ['CRCL'] for examination.

6. The CRCL, *vide* test report dated 02.06.2015, reported the samples to be "Used Oil" and not "Bitumen". On the basis of the said

report, the Customs authorities took the view that the imported goods were "Used Oil" falling under Customs Tariff Heading 27101990 and treated the same as a restricted item requiring the requisite permissions/licence. The goods were consequently seized on 05.06.2015 under Section 110 of the Act.

7. Thereafter, the Petitioner was issued a summons under Section 108 of the Act and its statement was recorded on 06.07.2015. According to the Petitioner, it had placed an order for "Bitumen" and the goods described as "Used Oil" had been supplied by the overseas supplier by mistake. The Petitioner also claims to have produced a written communication from the overseas supplier acknowledging the mistake.

8. On 19.08.2015, the Petitioner addressed a communication to the Customs authorities seeking waiver of the Show Cause Notice and early adjudication of the matter. Notwithstanding the said request, a Show Cause Notice dated 15.09.2015 was issued by the Joint Commissioner of Customs, proposing, *inter alia*, confiscation of the goods under Section 111 of the Act and imposition of penalties under Sections 112, 114A and 114AA of the Act.

9. The Petitioner submitted its written reply to the Show Cause Notice on 01.10.2015. The Petitioner disputed the allegation that the "Used Oil" was a restricted or prohibited item and contended that the goods were not hazardous waste. A personal hearing was thereafter afforded on 08.12.2015, which was attended by the Petitioner's counsel. The Petitioner states that, during the hearing, a request was

again made for early adjudication.

10. No adjudication order was passed thereafter for a considerable period. A further opportunity of personal hearing was afforded on 27.10.2016 by the succeeding adjudicating officer. The Petitioner did not appear on the said date but, by a communication dated 27.10.2016, informed the adjudicating authority that it had already submitted its written reply and had availed the opportunity of personal hearing and, therefore, did not wish to have any further personal hearing. The Petitioner again requested that the matter be adjudicated expeditiously, particularly as the consignment was lying uncleared.

11. The matter ultimately came up before the Additional Commissioner of Customs, ACE, New Delhi, who afforded another personal hearing on 31.01.2023. The Petitioner's representative appeared at the hearing and reiterated the earlier submissions and requested that the Show Cause Notice be adjudicated without any further delay.

12. On 28.02.2023, the Additional Commissioner of Customs passed Order-in-Original No. 11/SK/ADC/ACE/2023. The adjudicating authority directed amendment of the description and classification in Bill of Entry No. 9174780 from "Bitumen" falling under CTH 27132000 to "Used Oil" falling under CTH 27101990. The adjudicating authority further recorded that the "Used Oil" was non-hazardous and held that no additional duty over and above the duty already determined was payable. The declared transaction value of Rs.36,73,758/- was accepted and the customs duty liability of

Rs.9,22,210/- was confirmed, which, according to the order, had already been paid and was accordingly appropriated.

13. The Order-in-Original further held the goods liable to confiscation under Sections 111(l) and 111(m) of the Act. However, an option was granted to the Petitioner to redeem the goods on payment of redemption fine of Rs.1,83,000/- under Section 125 of the Act. A penalty of Rs.5,000/- was imposed upon the Petitioner under Section 112(a)(ii) of the Act and a further penalty of Rs.1,83,000/- was imposed under Section 114AA of the Act. The proposed penalty under Section 114A of the Act was dropped.

14. The Order-in-Original also records that the "Used Oil" was non-hazardous and notices that similar non-hazardous used oil had been cleared from Nhava Sheva Port. The adjudicating authority accepted the declared transaction value and recorded that no additional duty, over and above the duty already determined, was payable. The order, thus, culminated the adjudication proceedings arising out of the Show Cause Notice dated 15.09.2015.

15. It is not in dispute that the Bill of Entry was thereafter amended and re-assessed on 29.08.2023 pursuant to the aforesaid Order-in-Original. The description and classification of the goods were accordingly changed from "Bitumen" to "Used Oil" and from CTH 27132000 to CTH 27101990.

16. According to the Petitioner, upon seeking clearance of the goods pursuant to the adjudication order and the consequential re-assessment, the Petitioner was required to deal with an amount

described in the Customs EDI System as "interest charges". The Petitioner states that the amount reflected as interest was approximately Rs.11,74,806/- on 16.11.2023. The Petitioner thereafter made representations to the Customs authorities seeking removal of the said interest liability.

17. The Petitioner states that the amount reflected as interest continued to increase and was shown as Rs.12,10,874/- on 22.02.2024 and Rs.13,61,713/- on 28.03.2026. According to the Petitioner, the amount had increased further to Rs.15,21,645/- as on 01.05.2026. The Petitioner claims to have addressed representations dated 16.11.2023, 26.03.2025, 02.04.2025, 11.04.2025, 02.05.2025, 19.05.2025, 03.12.2025 and 28.03.2026 requesting that the said interest be removed. No effective response was received, leading to the filing of the present Petition.

CONTENTIONS OF THE PARTIES:

18. Contentions on behalf of the Petitioner:

18.1. It was submitted that the Petitioner cannot be made liable for interest for the period during which the Bill of Entry could not be finally processed on account of the seizure of the goods and the pendency of adjudication proceedings before the Customs authorities. It was submitted that the Bill of Entry was presented on 08.05.2015 and there is no allegation that the Bill of Entry itself was presented belatedly.

18.2. It was further submitted that the Petitioner had continuously sought adjudication of the proceedings. The Petitioner had filed its reply to the Show Cause Notice on 01.10.2015, appeared through counsel at the personal hearing on 08.12.2015, and thereafter, by communication dated 27.10.2016, specifically requested that the matter be adjudicated expeditiously. Even when the matter was taken up in 2023, the Petitioner appeared and again requested adjudication. Thus, according to the Petitioner, the prolonged pendency of the proceedings cannot be attributed to it.

18.3. It was further submitted that the provisions relating to late presentation of a Bill of Entry under Section 46(3) of the Act have no application to the present case. The Bill of Entry was admittedly presented on 08.05.2015, shortly after the arrival of the goods, and there is no case of the Respondent that the amount reflected in the EDI System represents a charge for delayed presentation of the Bill of Entry.

18.4. Reliance was placed upon the decisions of this Court in ***Swatch Group India Pvt. Ltd. v. Union of India & Ors.***[1] and ***Gala International Pvt. Ltd. v. Additional Director General, Directorate of Revenue Intelligence, Delhi & Ors.***[2], to contend that statutory proceedings cannot be kept pending indefinitely and that departmental delay cannot be permitted to operate to the prejudice of the importer.

18.5. It was submitted that the adjudication proceedings remained pending from September, 2015 until February, 2023, i.e. for more than seven (07) years. During this entire period, according to the Petitioner,

[1] 2023 SCC OnLine Del 4938
[2] 2023 SCC OnLine Del 6073

the goods remained under the control of the Customs authorities and the Petitioner had no occasion to obtain final clearance of the goods. It was, therefore, contended that the Department cannot now seek to recover interest calculated by treating the liability as having remained outstanding from the original assessment in May, 2015.

18.6. It was further submitted that the Order-in-Original itself did not sustain the Department's original apprehension in its entirety. The adjudicating authority ultimately recorded that the imported "Used Oil" was non-hazardous, accepted the declared transaction value and held that no additional duty over and above the duty already determined was payable. It was submitted that the Petitioner should not be burdened with an interest liability for the prolonged period during which the Department itself was seized of the matter.

19. Contentions on behalf of the Respondent:

19.1. *Per contra*, it was submitted that the present Petition is misconceived. It was contended that the Petitioner has an efficacious statutory appellate remedy against the Order-in-Original and that the present Petition under Article 226 of the Constitution ought not to be entertained

19.2. It was submitted that the Petitioner accepted the Order-in-Original and exercised the option for redemption of the confiscated goods. Having accepted the order and sought redemption, the Petitioner cannot now dispute the statutory consequences flowing from the said order.

19.3. It was submitted that the amount reflected in the EDI System is not a charge for delayed presentation of the Bill of Entry under Section 46(3) of the Act. The Bill of Entry was indeed presented in 2015, but the goods were subsequently found to have been misdeclared. The confiscation proceedings culminated in an order permitting redemption under Section 125 of the Act and, consequently, the Petitioner became liable to pay the duty and other charges payable in respect of the goods.

19.4. Reliance was placed upon the judgment of the Supreme Court in ***M/s Navayuga Engineering Co. Ltd. v. Union of India & Anr.***[3], to submit that once confiscated goods are redeemed upon payment of fine under Section 125 of the Act, the owner is liable to pay the duty and charges payable in respect of the goods and the consequential statutory interest on delayed payment of duty.

19.5. It was further submitted that the EDI System does not create the liability but merely reflects the statutory liability arising under the Act. According to the Respondent, the fact that the adjudication proceedings remained pending for some time cannot, by itself, extinguish a statutory liability. It was also submitted that the Petitioner cannot rely upon alleged financial hardship, detention charges or demurrage to seek waiver of statutory interest.

<u>ANALYSIS & FINDINGS:</u>

20. This Court has carefully considered the submissions advanced on behalf of the parties and perused the material on record.

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[3] 2024 INSC 547

21. At the outset, it is necessary to delineate the precise controversy which arises for consideration. The Petitioner has described the amount reflected in the Customs EDI System as "interest charges" and seeks waiver thereof. The Respondent, however, does not contend that the said amount represents any charge on account of delayed presentation of the Bill of Entry under Section 46(3) of the Customs Act, 1962 ['the Act']. The Respondent's case is that the liability arises as a consequence of the confiscation proceedings and the subsequent redemption of the goods under Section 125 of the Act.

22. Thus, the question of delayed presentation of the Bill of Entry under Section 46(3) of the Act is not really in issue. The Bill of Entry was filed on 08.05.2015. There is no allegation that the Petitioner had failed to present the Bill of Entry within the prescribed period. The interest reflected in the EDI System is sought to be justified on an entirely different basis.

23. The Respondent principally relies upon Section 125 of the Act and the judgment of the Supreme Court in ***Navayuga Engineering*** (supra). In the said case, the Supreme Court considered the liability to pay customs duty in respect of goods which had been confiscated but were subsequently redeemed upon payment of fine under Section 125 of the Act. The Supreme Court held that the owner of the goods remains liable to pay customs duty even after redemption. At the same time, the Supreme Court drew a distinction between the *occasion on which the liability under Section 125(2) arises* and the *statutory machinery by which the duty liability is assessed and determined*. The Court held that, in confiscation proceedings, the obligation to pay duty

and other charges under Section 125(2) arises when the owner exercises the option to redeem the goods and the Department accepts the same. The duty liability arising under Section 125(2) is thereafter required to be assessed under Section 28. The Supreme Court further held that once Section 28 applies for determination of the duty liability, the statutory liability towards interest on delayed payment of duty is attracted.

24. The aforesaid decision, therefore, makes two aspects clear. First, the liability under Section 125(2) is a consequence of the confiscation and redemption proceedings and is distinct from the original assessment of the Bill of Entry. Second, once the liability is required to be determined through the machinery of Section 28, the statutory interest provision would follow in accordance with law.

25. Applying the aforesaid principle to the facts of the present case, it is important to notice the chronology. The Bill of Entry was filed on 08.05.2015 and was initially assessed on the basis of the declaration made by the Petitioner that the goods imported were “Bitumen”. The goods were thereafter examined, found to be “Used Oil”, seized on 05.06.2015 and made the subject matter of confiscation proceedings.

26. The Show Cause Notice was issued on 15.09.2015. The Petitioner submitted its reply on 01.10.2015 and a personal hearing was afforded on 08.12.2015. Thereafter, although another hearing was fixed on 27.10.2016, the proceedings were not brought to conclusion. The matter was ultimately taken up by the Additional Commissioner of Customs only in January, 2023 and the Order-in-Original came to

be passed on 28.02.2023.

27. Thus, the proceedings arising out of the Show Cause Notice dated 15.09.2015 remained pending for more than seven (07) years before the liability arising from the confiscation proceedings was finally determined by the adjudicating authority.

28. The significance of the date of determination cannot be overlooked. Prior to the adjudication of the Show Cause Notice, the Petitioner was faced with proceedings in which the very nature, description and classification of the imported goods were in dispute. The goods had been seized and were not available to the Petitioner for clearance. The question whether the goods were liable to confiscation and, if so, whether they could be redeemed upon payment of fine, was itself yet to be adjudicated.

29. It was only by the Order-in-Original dated 28.02.2023 that the adjudicating authority determined the consequences of the confiscation proceedings. The authority directed amendment of the description and classification of the goods from "Bitumen" under CTH 27132000 to "Used Oil" under CTH 27101990; confirmed the customs duty liability of Rs.9,22,210/-; recorded that the said duty had already been paid and appropriated; imposed redemption fine of Rs.1,83,000/-; and imposed penalties of Rs.5,000/- under Section 112(a)(ii) and Rs.1,83,000/- under Section 114AA of the Act.

30. The Order-in-Original further recorded that the "Used Oil" was non-hazardous and that no additional duty over and above the duty already determined was payable. Consequently, it is only upon the

passing of the Order-in-Original dated 28.02.2023 that the consequences flowing from the confiscation proceedings stood determined.

31. In these circumstances, the Respondent cannot, in this Court's view, proceed on the basis that the statutory interest liability arising from the redemption proceedings commenced from the date of the original assessment of the Bill of Entry in May, 2015.

32. The original assessment in May, 2015 was an assessment based upon the declaration of the goods as "Bitumen". That assessment was followed almost immediately by physical examination, seizure and initiation of confiscation proceedings. The subsequent adjudication altered the description and classification of the goods and determined the consequences of the confiscation proceedings. The liability arising from such proceedings, therefore, cannot be retrospectively treated as having remained payable from the date of the original assessment merely for the purpose of calculating interest.

33. The judgment in ***Navayuga Engineering*** (supra) supports this distinction. The Supreme Court has specifically held that the obligation to pay duty and charges under Section 125(2) arises in the context of the exercise and acceptance of the redemption option, while the assessment and determination of the duty liability is undertaken through the machinery provided under Section 28. It is upon such determination that the statutory interest provision becomes attracted.

34. In the present case, the amount/liability arising from the adjudication proceedings was determined by the Order-in-Original

dated 28.02.2023. Therefore, the period prior thereto, during which the confiscation proceedings themselves remained pending and the amount payable pursuant thereto had not been finally determined, cannot be treated as a period of delayed payment of the amount determined under the said proceedings.

35. This Court is conscious that the original Bill of Entry did contain an assessment of customs duty of Rs.9,22,210/-. However, the Respondent itself does not contend that the present interest demand is merely interest on an unpaid amount arising from that original assessment. Its case is founded upon the liability consequential to confiscation and redemption under Section 125. Once the Respondent chooses to sustain the interest demand on that basis, the date on which the liability arising from the confiscation proceedings was determined assumes significance.

36. There is yet another circumstance which supports the aforesaid conclusion. The record demonstrates that the Petitioner did not remain inactive during the pendency of the adjudication proceedings. The Petitioner filed its reply to the Show Cause Notice, appeared through counsel at the hearing held on 08.12.2015 and, thereafter, by communication dated 27.10.2016, specifically informed the adjudicating authority that it did not seek any further personal hearing and requested that the matter be adjudicated expeditiously. The Petitioner again appeared before the adjudicating authority on 31.01.2023 and requested that the proceedings be concluded.

37. This Court is not holding that departmental delay, by itself,

extinguishes a statutory liability to pay interest. Such a proposition would not be consistent with the statutory scheme or the judgment of the Supreme Court in ***Navayuga Engineering*** (supra). What is being held is narrower: "*interest cannot be calculated for a period during which the liability sought to be subjected to interest had itself not been determined*".

38. The distinction is material. If an amount has been determined and has thereafter remained unpaid, the statutory consequences of delayed payment may follow in accordance with law. However, where the amount itself is determined only upon culmination of the confiscation proceedings, the period anterior to such determination cannot automatically be treated as a period of delayed payment of that subsequently determined liability.

39. The Respondent has relied upon the finality of the Order-in-Original and the Petitioner's exercise of the option of redemption. There is no dispute that the Petitioner has not challenged the Order-in-Original dated 28.02.2023 in the present proceedings. This Court is also not examining the correctness of the findings relating to classification, confiscation, redemption fine or penalty. Those aspects have attained finality and shall remain undisturbed.

40. However, acceptance of the Order-in-Original cannot mean that every amount subsequently reflected in the EDI System is immune from examination by this Court. The present Petition does not seek to reopen the adjudication order. The limited grievance is as to the period for which the consequential interest has been computed.

41. The Respondent has also submitted that the EDI System merely reflects the statutory liability and does not itself create such liability. There can be no quarrel with the proposition. The EDI System cannot create a liability which is otherwise not authorised by the Act. Conversely, an amount which is statutorily payable cannot be avoided merely because it is reflected in the EDI System. The question, therefore, is one of correct computation in accordance with the statutory provisions.

42. In this regard, the amount reflected in the EDI System, as stated by the Petitioner, had reached Rs.11,74,806/- on 16.11.2023 and continued to increase thereafter. The fact that the amount continued to increase is itself indicative of the computation being made by reference to an earlier date. If the computation has proceeded from the original assessment in May, 2015, the same would necessarily require correction in view of the legal position discussed hereinabove.

43. This Court, therefore, holds that the Respondent was not justified in computing the interest liability arising from the confiscation and redemption proceedings from the date of the original assessment in May, 2015. The period prior to 28.02.2023, the date of determination of the amount pursuant to the adjudication proceedings cannot be subjected to interest on the premise that the amount determined under the Order-in-Original was in delayed payment from May, 2015.

44. At the same time, the Petitioner cannot be granted a blanket waiver of interest for the period subsequent to determination of the

liability. Once the amount became determined pursuant to the Order-in-Original dated 28.02.2023 and became subject to the statutory consequences applicable to delayed payment, the liability, if otherwise attracted under the Act, would have to be worked out in accordance with law.

45. The precise amount payable, therefore, requires recalculation by the Respondent. Such recalculation shall commence from the date on which the amount was determined pursuant to the Order-in-Original dated 28.02.2023 and shall be made in accordance with the applicable statutory provisions governing interest. The Respondent shall also take into account the subsequent re-assessment of the Bill of Entry on 29.08.2023 and all payments or appropriations already made.

46. In particular, the Respondent shall not compute interest for the period from 08/09.05.2015 till 28.02.2023 merely on the ground that the original Bill of Entry had been assessed in May, 2015. The interest, if otherwise payable, shall be determined with reference to the liability as determined in the adjudication proceedings and the statutory provisions applicable thereto.

47. This Court also deems it appropriate to clarify that the reference to the Order-in-Original dated 28.02.2023 as the date of determination is confined to the liability arising from the confiscation proceedings which is the subject matter of the present dispute. This Court is not expressing any opinion on any independent statutory liability which may otherwise arise under the Act on account of a separate and legally recognised default.

48. The reliance placed by the Petitioner on the decisions in ***Swatch Group India*** (supra) and ***Gala International*** (supra) is therefore not required to be examined for the purpose of granting a complete waiver. The relief which follows in the present case flows principally from the statutory scheme of Sections 125 and 28 of the Act, as explained by the Supreme Court in ***Navayuga Engineering*** (supra).

49. The contention regarding availability of an alternate statutory remedy also does not warrant dismissal of the present Petition. The Petitioner is not seeking, in these proceedings, adjudication of the correctness of the confiscation, classification or penalties imposed under the Order-in-Original. The limited question concerns the computation of consequential interest and, in particular, the period from which such interest can validly be computed. Since the material facts are undisputed and the issue turns upon the application of the statutory scheme to the admitted chronology, the present Petition can be disposed of by issuing a limited direction for recomputation.

50. Accordingly, the challenge to the entire interest liability cannot be accepted. However, the computation of interest for the period prior to determination of the amount pursuant to the Order-in-Original dated 28.02.2023 cannot be sustained.

CONCLUSION:

51. In view of the aforesaid discussion, the present Petition is partly allowed in the following terms:

i. The Respondent shall recompute the interest liability in respect of Bill of Entry No. 9174780 dated 08.05.2015 in accordance with the observations made in Paragraph 43 herein, the Customs Act, 1962 and the applicable statutory provisions;

ii. while undertaking the aforesaid computation, the Respondent shall exclude the period from the date of the original assessment in May, 2015 up to 28.02.2023, being the date on which the liability arising from the adjudication proceedings was determined by the Order-in-Original;

iii. the Respondent shall, thereafter, determine the interest, if any, payable for the period subsequent to 28.02.2023 strictly in accordance with the applicable statutory provisions and the liability determined under the Order-in-Original;

iv. the Respondent shall take into account the subsequent re-assessment of the Bill of Entry on 29.08.2023 and shall give due credit for all amounts already paid or appropriated towards customs duty, redemption fine and penalties;

v. the Respondent shall issue a fresh computation to the Petitioner within four (04) weeks from the date of receipt of a copy of this judgment; and

vi. upon receipt of the fresh computation, the Petitioner shall be liable to discharge the amount, if any, found payable in accordance with law.

52. The computation of interest reflected in the Customs EDI System, to the extent that it proceeds by treating the period prior to

28.02.2023 as a period of delayed payment of the liability determined in the confiscation proceedings, is accordingly set aside.

53. It is clarified that this Court has not interfered with or expressed any opinion upon the findings contained in Order-in-Original No. 11/SK/ADC/ACE/2023 dated 28.02.2023 relating to the description or classification of the goods, confiscation, redemption fine, penalty or any other finding contained therein. The said order shall remain undisturbed.

54. The Petitioner shall, however, be entitled to the benefit of the fresh computation in terms of this judgment and shall be liable to pay only such amount as may be found payable after undertaking the aforesaid exercise.

55. The Petition, along with the pending application, is disposed of in the aforesaid terms.

ANIL KSHETARPAL, J.

SHAIL JAIN, J.

SEPTEMBER 28, 2026
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