



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 10826 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MR. JUSTICE D.N. RAY

=====		
Approved for Reporting	Yes	No
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ROHAN DYES AND INTERMEDIATES LIMITED & ANR.

Versus

UNION OF INDIA & ORS.

Appearance:

MS. HIMANSHI PATWA, ADVOCATE FOR ANANDODAYA S MISHRA(8038)
for the Petitioner(s) No. 1,2

MR ANKIT SHAH(6371) for the Respondent(s) No. 1

MR CB GUPTA(1685) for the Respondent(s) No. 2

NOTICE SERVED for the Respondent(s) No. 3

CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MR. JUSTICE D.N. RAY

Date : 07/03/2025

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE D.N. RAY)

“And then one day you find

Ten years have got behind you

No-one told you when to run

You missed the starting gun”

-Pink Floyd, Time (The Dark Side of the Moon)



1. The short issue that calls for determination by this Court is whether a show cause notice issued by the Customs Department, which has remained unadjudicated for a long period of time, in excess of ten years, in the present case, should be quashed only on such ground ?

2. Heard learned advocate Ms. Himanshi Patwa for learned advocate Mr. Anandodaya Mishra for the Petitioners and learned advocate Mr. Ankit Shah for the Respondent No. 1 and learned advocate Mr. C.B. Gupta for the Respondent No. 2.

3. Rule returnable forthwith. Learned advocate Mr. Ankit Shah waives service of notice of rule for the Respondent No. 1 and learned advocate Mr. C.B. Gupta waives service of notice of rule for the Respondent No. 2. With the consent of learned advocates for the respective parties, the matter is taken up for hearing, as the issue involved is very short.

4. The brief facts of the case are as follows:

4.1 The Petitioner is a registered company, *inter alia*



engaged in the manufacture and export of dyes and chemicals. The Petitioner undertook the export of “Synthetic organic dyes Acid Black-210” under two shipping bills Nos.:1393015 & 1393016, both dated 14.09.2009, from the Inland Container Depot (ICD) at Ahmedabad. The Petitioners availed the benefits of the Duty Entitlement Pass Book Scheme (DEPB).

4.2 A Search was carried out by the officers of the Directorate of Revenue Intelligence (DRI) on 15.09.2009, at the factory and the registered office premises of the Petitioners, suggesting that the said exports involved mis-declaration of the products. Samples were obtained by the DRI and sent for testing.

4.3 The Chemical Examiner, in his report dated 29.09.2009, mentioned that, even when these products are clearly black-coloured powder in the form of “synthetic organic dye acids”, the samples of one of the shipping bill No. 1393015, dated 14.09.2009 would be “Acid Black 234” and not “Acid Black 210” as declared by them. Also, it was stated that the other shipping bill No. 1393016, clearly contained “Acid Black 210”,



as declared by the Petitioners.

4.4 Based on the investigation, the office of the DRI issued a Show Cause Notice dated 08.03.2010, stating that the Petitioners wrongfully availed the benefits under the DEPB Scheme and thus, proposed the confiscation of goods under the shipping bill No. 1393015, dated 14.09.2009.

4.5 The Petitioners have deposited Rs.75,00,000/- as a pre-deposit amount towards the protection of revenue interest, as directed by the DRI authorities.

4.6 DRI issued the second Show Cause Notice dated 03.11.2011 under Section 111(o) read with Section 28 of the Customs Act, 1962, for the past exports of the product “Acid Black 210”, and suggested that, all such exports were based on mis-declaration and accordingly sought the recovery of the benefits availed. The demand for recovery of the entire DEPB availed for period commencing from April 2005 to April 2010, i.e., Rs.1,23,31,774/-, with interest and penalties.



4.7. A Show Cause Notice dated 13.04.2010 was issued upon the petitioners by the Joint Director General of Foreign Trade, Ahmedabad, to take an action in this regard and impose penalties, under the provisions for the alleged mis-declaration.

4.8. The Petitioners filed their reply dated 15.06.2012 and clarified that there has been no mis-declaration by them, and further mentioned that the “Acid Black 210” and “Acid Black 234” are similar and identical products, and there is no difference in their chemical composition or structure.

4.9. The Petitioners filed additional written submissions before the Joint Director General of Foreign Trade, Ahmedabad, during the adjudication of these matters on 14.03.2013. In the order dated 10.07.2013, the Joint Director General of Foreign Trade agreed with the contention of the Petitioners and held that, the DEPB benefits had been duly availed. It was noted that, with respect to “Acid Black 234 and Orange 6”, it was found that there has been wrongful availment of the DEPB benefits, for which he



ordered recovery of Rs.11,68,682/- with its interest of Rs.96,316/-, which in view of being immediately paid by the Petitioners, were appropriated under this order. Thus, a token penalty of Rs.11,686/- was imposed.

4.10. The Petitioners submitted that, based on the detailed scrutiny and analysis of the entire facts and their entire exports along with its chemical analysis, corresponding to the DEPB schedule and rates, the Joint Director General of Foreign Trade by the order-in-original dated 10.07.2013, clearly adjudicated and found that the Petitioners have not resorted to any mis-declaration or mis-classification of their products as alleged and have correctly availed the DEPB benefits under the same, for all their exports from April 2005 to April 2010, for “Acid Black 210”.

4.11 The Petitioners submitted that, accordingly, the later parallel proceedings so undertaken by the office of the Foreign Trade Development Authorities were accordingly concluded entirely in favour of the Petitioners, on the identical issue sought to be adjudicated by the Customs Department.



4.12 The Petitioners further submitted that, however inspite of the adjudication and personal hearings of the 2 pending Show Cause Notices having already been undertaken by the Respondent-Customs Department in 2012, yet the same were not finalized and did not culminate in any final adjudication and order. The Petitioner mentioned that, even after the order-in-original passed by the Joint Director General of Foreign Trade on the same issue entirely in the favour of the petitioners, upon follow-up action and the representation to the Customs Department, including by giving them a copy of the said order, no proceedings were undertaken by the Respondent-Customs Department.

4.13. The Petitioners filed another letter dated 14.10.2024, before the Principal Commissioner of Customs, requesting the refund of the pre-deposit of the amount as well as quashing the Show Cause Notices, to which no reply was served by the Respondent No.2 till date. Thus, the present Petition has been filed with the following prayers:-

“A) That Your Lordships be pleased to issue an appropriate writ order or direction in the nature of a writ of mandamus, and or writ of Certiorari and or any other appropriate writ order or direction, quashing and setting aside the 2 Show Cause Notices F No. DRI/AZU/INV-45/2009 dated 8-3-2010 & 3-11-2011 and consequentially direct the Respondent no 2 to immediately refund the amounts deposited by the Petitioners of Rs. 75,00,000/-, along with interest @24% from the dates of deposit till its actual payment, to the Petitioners, with costs.

Amendment carried out as per Court's order dated 23.08.2024.

"AA. That Your Lordships be pleased to issue an appropriate writ, order or direction in nature of writ of mandamus and or writ of certiorari and or any other appropriate writ or direction, quashing and setting aside the 2 Show Cause Notices F.No.DRI/AZU/INV-45/2009 dated 08.03.2010 & 03.11.2011 at Annexure A and B, issued by Respondent No.3 i.e. DRI being without jurisdiction as DRI not being a "proper officer" under the Customs Act, 1962."

B) That Your Lordships may be pleased to issue a Writ of Prohibition or any other appropriate writ, direction or order, completely and permanently prohibiting the Respondents, their servants and agents from taking any action against them in pursuance of 2 Show Cause Notices Nos. DRI/AZU/INV-45/2009 dated 8-3-2010 & 3-11-2011.

C) Pending hearing and final disposal of the present petition, Your Lordships may be pleased to restrain the Respondents, their servants and agents from seeking any coercive recovery from the Petitioners pursuant to the above referred SCN thereby staying any implementation and adjudication of 2 Show Cause Notices Nos DRI/AZU/INV-45/2009 dated 8-3-2010 & 3-11-2011.

D) An ex-parte ad-interim relief in terms of para 11 (C) above may kindly be granted pending the issuance of notice and further hearing of this Petition;

E) Any other further relief that may be deemed fit in the facts and circumstances of the case may also please be granted;”



5. Ms.Himanshi Patwa, learned advocate for the petitioner submitted that the customs authorities have conducted parallel proceedings to the show cause notice issued by the Joint Director General of Foreign Trade, Ahmedabad in which by order dated 10.07.2013, the contentions of the petitioner have been substantially upheld and the show cause notice dated 13.04.2010 was adjudicated by imposing a token penalty of Rs.11,686/-. However, in spite of the same the Customs Authority, which had issued the impugned show cause notices dated 08.03.2010 and 03.11.2011 have not even adjudicated the same and therefore, today it is too late in the day to permit the Customs Authority to adjudicate the aforesaid SCNs. Ms. Patwa, learned advocate, relied upon the recent decision of this Court dated 30.01.2025 passed in Special Civil Application No. 18262 of 2022 and allied matters in the case of **M/s. Dhultawala Exim Private Ltd. Vs. Union of India & Anr.** to submit that the aforesaid show cause notices ought to be quashed as having been left unadjudicated over a very large period of time.

6. Mr. Ankit Shah and Mr.C.B.Gupta, learned advocates appearing for the respective respondents are not able to contradict the applicability of the decision of this Court in **M/s. Dhultawala Exim (Supra)** to the facts of the present case.

7. DISCUSSION & FINDINGS:-

7.1 This Court finds that the notice issued by the Joint Director General Foreign Trade, Ahmedabad is substantially similar to the impugned show cause notices issued by the Customs Authority . This Court finds that even if the merits of the impugned show cause notice are not gone into to compare the similarity with the show cause notice dated 13.04.2010 issued by the Joint Director General Foreign Trade, Ahmedabad, the fact remains that the impugned show cause notices dated 08.03.2010 and 03.11.2011, in spite of personal hearings in the same having been granted in 2012, are yet to be adjudicated.

7.2 This Court, in **Dhultawala Exim (Supra)**, relied upon several decisions of various High Courts including this Court as



under:-

(i) In the case of **Siddhi Vinayak Syntex Pvt. Ltd. v. Union of India** reported in **[2017 (352) ELT 455 (Guj.)]**, 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.

(ii) The Hon'ble Bombay High Court, in the case of **Shirish Harshavadan Shah v. Deputy Director, Enforcement Directorate, Mumbai** reported in **[(2010) 254 ELT 259 (Bom)]**, held that in absence for reason of delay in adjudication, the re-opening of the matter after such a lapse cannot be allowed, as it will cause serious detriment and prejudice to the petitioner.

(iii) The Hon'ble Delhi High Court, in the case of, **R.M. Malhotra v. Enforcement Directorate** reported in **[(2009) 246 ELT 141 (Del)]**, 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.;

(iv) 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 reported in **[W.P(C) 2845 of 2020 dated 24.06.2021]**, held that revival of the proceedings after an inordinate delay is contrary to the concept of speedy disposal of SCN, when proper reason for the delay is not provided.

8. The impugned SCNs have remained pending for more than 15 years and 13 years respectively. Considering the aforesaid decisions, this Court has no hesitation in holding that due to an inordinately long lapse of time , the impugned show cause notices dated 08.03.2010 and 03.11.2011 can no longer remain pending for adjudication and must be quashed and set aside on that score alone. Accordingly, the petition succeeds and the impugned Show Cause Notices F No.DRI/AZU/INV-45/2009 dated 08.03.2010 and 03.11.2011 are hereby quashed and set aside. Rule is made absolute to the aforesaid extent. No order as to costs.

(BHARGAV D. KARIA, J)

(D.N.RAY,J)

BINA SHAH