



2026:DHC:4650-DB



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

Date of decision: 20th May, 2026

+ **W.P.(C) 2341/2026 & CM APPL. 11289/2026**

VIVO MOBILE INDIA PVT LTD

THROUGH ITS AUTHORIZED REPRESENTATIVE
MR. ALEKH SRIVASTAVA,
HAVING ITS OFFICE AT
10TH& 11TH FLOOR, PALM SPRINGS PLAZA
(COMPLEX), VILLAGE WAZIRABAD, SECTOR-54,
GURUGRAM, HARYANA - 122003.**PETITIONER**

Through: Mr. Kishore Kunal and Mr.
Aditya Rathore, Advocates

versus

**1. ASSISTANT COMMISSIONER - GROUP 2A, OFFICE
OF THE COMMISSIONER OF CUSTOMS
(PREVENTIVE)**

NEW CUSTOMS HOUSE, NEAR IGI AIRPORT, NEW
DELHI-110037**RESPONDENT NO. 1**

**2. COMMISSIONER OF CUSTOMS
(PREVENTIVE)**

NEW CUSTOMS HOUSE, NEAR IGI AIRPORT, NEW
DELHI-110037**RESPONDENT NO. 2**

3. PRINCIPAL COMMISSIONER OF

**CUSTOMS, ACC (IMPORT)**

NEW CUSTOMS HOUSE, NEAR IGI AIRPORT, NEW
DELHI-110037

.....RESPONDENT NO. 3

Through: Mr. Gibran Naushad, SSC with
Mr. Suraj Shekhar Singh,
Advocate

CORAM:**HON'BLE MR. JUSTICE NITIN WASUDEO SAMBRE****HON'BLE MR. JUSTICE AJAY DIGPAUL****JUDGMENT (ORAL)****AJAY DIGPAUL, J.**

1. The present writ petition assails communications by the department dated 14.01.2026 and 12.12.2025¹ issued to the petitioner and seeks directions to the respondents for refund of an amount of ₹ 3,20,87,688/- on account of this amount having been deposited by the petitioner under protest pursuant to the aforementioned impugned communications. The prayer in the petition stands reproduced thus:

- a. “Issue a Writ of Certiorari or any other appropriate Writ, Order or Direction quashing and setting aside the Impugned Demand Notices dated 14.01.2026 and 12.12.2025;
- b. Issue a Writ of Mandamus or any other appropriate Writ, Order or Direction directing the Respondents to forthwith refund to the Petitioner the amount of Rs. 3,20,87,688/- deposited by the Petitioner under protest pursuant to the Impugned Demand Notice dated 12.12.2025, together with applicable interest, as per law;

¹ “Impugned Communications”



c. Pass any such further or other order(s), including an order as to costs, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

2. The Petitioner is engaged in the manufacturing and sale of mobile phones in India, and has been regularly importing various input parts and components, including that of ‘Screw Washer/Gaskets’ for the manufacture of ‘Printed Circuit Board Assembly’ to be used in mobile phones, by filing bills of entry with the Customs Department in terms of the provisions of the Customs Act, 1962².

3. An investigation had been initiated against the petitioner for its import of certain items (screw washer/gasket), alleging misclassification by the petitioner of imported goods.

4. Thereafter, on 07.04.2025 and 04.12.2025, the respondents recorded statements of the petitioner’s authorised representative, who stated that the screw washer is not an essential component in its manufacturing process and that the petitioner will be willing to pay differential duty on imports of the said component. He also requested that the department issue an appropriate duty demand letter to that extent.

5. The impugned communication dated 12.12.2025 was issued by respondent no. 1 indicating differential customs duty amounting to ₹ 3,20,87,688 for the period of April 2023 to February 2025, while impugned communication dated 14.01.2026 indicated differential duty of ₹ 3,57,95,501/- for the period of February 2021 to March 2023.

² hereinafter, “The Act”



6. Regarding the latter communication, a reference to our Order dated 16.04.2026 reveals that the respondents have undertaken not to bring impugned communication dated 14.01.2026 into effect, thereby limiting the petitioner's challenge only to the impugned communication dated 12.12.2025.

7. Learned counsel for the petitioner, Mr. Kishore Kunal, submits that the impugned communication has been issued by the Assistant Commissioner, whose pecuniary jurisdiction is capped at ₹ 5,00,000/-, and that the notice was therefore issued in contravention of the scheme contemplated within Section 28 of the Act.

8. He argues that these notices amount to a direct imposition of demand upon the petitioner without issuing a show cause notice within the scheme of Section 28 of the Customs Act, 1962, and that no liability may be fastened upon the petitioner in this manner.

9. It is further submitted that the sum of ₹ 3,20,87,688/- was paid by the petitioner under protest, and that the same cannot be appropriated towards the impugned demand notice.

10. He relies upon the decision of the Hon'ble Supreme Court in *Radhika Agarwal v Union of India*³ and a decision of the Karnataka High court in *Suretex Prophylactics (India) P Ltd v Union of India*⁴ to argue that recovery through amounts paid under protest owing to threats of arrest/coercion, where not preceded by an order of adjudication, are wholly without jurisdiction.

³ (2025) 6 SCC 545

⁴ (2023) 8 CENTAX 19 (Kar)



11. Learned counsel for the respondents, Mr. Gibran Naushad, submits that there is a complete mischaracterization of the dispute. He argues that the impugned notice is not a demand notice in consonance with Section 28 of the Act, and that the impugned notice is actually a letter that was issued during investigation and was merely of a suggestive nature to the extent of differential duty payable by the petitioner.

12. Mr. Naushad brings our attention to the petitioner's letter dated 22.12.2025 to argue that the payment was made voluntarily after the petitioner's own calculation of differential duty.

13. Lastly, he refutes Mr. Kunal's arguments on inadequacy of pecuniary jurisdiction on the part of the officer who issued the impugned communication on the ground that the document is merely a letter and not a notice as contemplated under Section 28 of the Act, and that notwithstanding the same, the impugned communication was issued after the approval of the Commissioner of Customs Preventive (competent authority).

14. Heard learned counsel for the parties.

15. We are not persuaded with the petitioner's argument that the impugned communication is a formal demand notice, since the impugned communication was issued as a follow up to the statement of the petitioner's own authorized representative who expressed a willingness to pay the differential duty and requested that a letter be issued to that extent.

16. On the point of refund, a perusal of the contents of the letter in their entirety reveal an admission by the petitioner to the extent that there existed an error in calculation of differential duty in the duty



computation sheet issued by the respondent. Based on this, the petitioner itself not only recomputed such differential duty but also proceeded to make payment of such recomputed amount.

17. However, this admission does not bar the petitioner from its entitlement to the statutory process of adjudication of its liability, if any, and it is trite that such amounts paid during investigation, whether under protest or otherwise, may be appropriated towards the final liability of an assessee at the time of passing of an adjudicatory order.

18. While we are not inclined to direct a refund of the deposited amount of around ₹3.2 Crore to the petitioner, we accept the statement of Mr. Naushad on instructions that a show cause notice regarding the petitioner's liability, if any, shall be issued within a period of four weeks from the date on which this order is uploaded, and that the amount paid by the petitioner shall be appropriated towards the demand, if any, eventually raised in the adjudicatory order.

19. In consideration of the statement made by Mr. Naushad for issuance of a show cause notice within four weeks, we quash and set aside the impugned communication dated 12.12.2025, with no finding on impugned communication dated 14.01.2026 owing to Mr. Naushad's statement as recorded in our order dated 16.04.2026.

20. The petition is therefore partly allowed in terms of prayer clause (a).

21. In the interregnum, no further demands or recovery shall be made against the petitioner.



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22. It is once again made clear that this order does not adjudicate the merits of the petitioner's liability, if any.

23. The petition stands disposed of, along with pending applications, if any.

**AJAY DIGPAUL
(JUDGE)**

**NITIN WASUDEO SAMBRE
(JUDGE)**

**MAY 20, 2026
gs/av**