



2026:DHC:8310-DB



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

Date of decision:22.09.2026

CNR No. DLHC010101282013

+ **W.P.(C) 441/2013**

MANGALI IMPEX LTD

.....Petitioner

Through: **Mr. Deepak Agrawal, Adv.**

versus

UNION OF INDIA AND ORS

.....Respondents

Through: **Mr. Gibran Naushad, SSC.**

CORAM:

HON'BLE MR. JUSTICE AVNEESH JHINGAN

HON'BLE MS. JUSTICE SHAIL JAIN

AVNEESH JHINGAN, J. (ORAL)

1. In the writ petition, the question raised is reproduced below:

“a) WHETHER Show Cause Notice can be issued by Asst. Commissioner Custom, Special Intelligence & Investigation Branch (SIIB) in terms of section 124 of the Custom Act not being a proper officer in terms of section 2 (34) of the Custom Act as well as in terms of section 28 of the Custom Act. (Law has been settled in judgment dated 18.02.2011 in Civil Appeal No.4294-4295 of 2002, Commissioner of Custom Vs. Syed Ali & Anr. with Civil Appeal Nos.4603-4604 of 2005 given by Hon'ble Mr. Justice D.K. Jain and Hon'ble Mr. Justice H.L. Dattu of Hon'ble Supreme Court of India). Judgement enclosed herewith as ANNEXURE-C and amendment which was



made and (Inserted by s2 of the Customs (Amendment and Validation) Act, 2011 (14 of 2011) reads as under:

Section 11 which has been incorporated under section 28 of the Customs Act reads as under:-

"(11) Notwithstanding anything to the contrary contained in any judgment, decree or order of any court of law, tribunal or other authority, all persons appointed as officers of Customs under sub-section (1) of section 4 before the 6th day of July, 2011 shall be deemed to have and always had the power of assessment under section 17 and shall be deemed to have been and always had been the proper officers for the purposes of this section.

Explanation 1-

For the purposes of this section, "relevant date" means

- (a) in a case where duty is not levied, or interest is not charged, the date on which the proper officers makes an order for the clearance of goods;
- (b) in case where duty is provisionally under section 18, the date of adjustment of duty after the final assessment thereof or reassessment as the case may be;
- (c) in a case where duty or interest has been erroneously refunded, the date of refund;
- (d) in any other case, the date of payment of duty or interest.

Explanation 2 -

For removal of doubts, it is hereby declared that any non-levy, short levy or erroneous refund before the date on which the Finance Bill, 2011 receives the assent of the President, shall continue to be governed by the provisions of section 28 as it stood immediately before the date on which such assent is received."

In view of the Explanation 2, it is clear that whatever duties have been refunded or erroneously refunded before



the date on which the Finance Bill, 2011 received the assent of President, shall continue to be governed by the **section 28 as it stood immediately before the date on which such assent is received. That means the show cause notice has not been issued by the proper officer and the amendment has no retrospective effect and the case of the petitioner is covered by the Syed Ali judgment. Once the amendment has no retrospective effect in those circumstance whether the show cause notice can be continued?**

b) WHETHER the writ jurisdiction of this Hon'ble Court can be invoked under Article 226 of Constitution of India, when the provisions of law which has been applied in the show-cause notice or relied upon in the show-cause notice are not applicable in the circumstances of the case and has been wrongly interpreted only to recover the amount which have been availed by the petitioner in accordance with law?"

2. The brief facts are that M/s. Mangali Impex Ltd. (hereinafter 'the petitioner') exported 27 consignments of calcium stearate. The samples were drawn and the Central Revenue Control Laboratory, New Delhi (for short 'CRCL') submitted the test report on 20.01.1999 to the effect that the consignments exported were of calcium stearate.

2.1 On 09.08.2000, the Customs unit under the supervision of the Assistant Commissioner, SIIB (hereinafter 'respondent no.4') raided the residence and office premises of the petitioner. It is the pleaded case of the petitioner that investigation was initiated and the samples were opened and re-sealed before being sent to the laboratory on 08.10.2000 and this was done in the absence of the petitioner.

2.2 The re-test report dated 10.01.2001 was that the samples were of calcium carbonate coated with salt of fatty acid. The director of the



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petitioner company was taken into custody on 27.04.2001. Bail was granted on 11.05.2001 by the Additional Sessions Judge, New Delhi (hereinafter 'sessions judge'). On 14.05.2001, this court issued notice in CrI.M. No. 1775 & CrI.M. No. 2060/2001 (hereinafter 'bail cancellation petition') and directed that the bail order dated 11.05.2001 shall not be implemented. In the bail cancellation petition on 21.05.2001, it was directed that the directions of the sessions judge while granting bail that the matter be investigated by the Central Bureau of Investigation (for short 'CBI') shall remain operative.

2.3 In pursuance of the directions of the sessions judge, the Chief Commissioner of Customs, Delhi Zone made a complaint to the CBI on 22.05.2001. FIR bearing No.RC/SIB/2001/E/001 dated 11.06.2001 was registered under Section 120B of the Indian Penal Code, 1860 (IPC) read with Section 420 IPC and Sections 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988 (PC Act).

2.4 On 29.06.2001, the director of the petitioner company was released on bail under the provisions of Section 167(2) of the Code of Criminal Procedure, 1973 (CrPC). On 10.07.2001, this court passed an order directing the CBI to continue the investigation, take appropriate action and bring the case to its logical conclusion in accordance with law.

2.5 The office of the Commissioner of Customs (Imports and General) issued Show Cause Notice bearing No. SIIB/CUS/SCN/47/2000/9554 dated 31.10.2003 (for short 'SCN') to the petitioner.

2.6 The final report dated 29.06.2004 submitted by the CBI was accepted by the special judge, New Delhi on 03.02.2006. The writ petition filed by the petitioner in 2011 challenging the SCN having not been issued by the



proper authority was disposed of on 09.05.2012. The court took into consideration the amendment to Section 28 of the Customs Act, 1962 (for short 'the Act') and granted liberty to the petitioner to challenge the constitutional validity of the amended sub-section of Section 28 of the Act. Hence, the present petition.

3. Learned counsel for the petitioner contends that the ground of challenge is that respondent no. 4 was not the proper authority for issuance of the SCN. Contention is that the matter was referred to the CBI and the closure report filed was accepted by the special court and no basis survives with the respondent to pursue the SCN.

4. Learned counsel for the respondent contends that no order has yet been passed pursuant to the SCN. The writ petition was filed challenging the SCN issued by respondent no. 4 under Sections 28 and 124 of the Act.

5. Learned counsel for the parties are *ad idem* that the issue of whether respondent no. 4 was the proper authority is no longer *res integra* and has been decided by the Supreme Court in R.P. No. 400/2021 (Civil Appeal No. 1827 of 2018), **Commissioner of Customs v. Canon India Pvt. Ltd.**, (2025) 4 SCC 509 wherein the issue was decided in favour of the department and respondent no. 4 was held to be the proper authority.

6. The jurisdictional issue raised to challenge the SCN in the writ petition that it was not issued by the proper authority has been decided by the Supreme Court in favour of the department. It would be apposite to note that the writ petition was filed at the stage of issuance of the SCN and the competent authority had no occasion to deal with the matter and the factual matrix relating to the SCN is yet to be determined.

7. On perusal of the SCN, the points for determination that *prima facie*



arise are as follows:

- 7.1 Whether the goods exported by the petitioner under the identified shipping bills were calcium carbonate coated with salt of fatty acid as alleged by the department on the basis of the re-test reports?
- 7.2 Whether the FOB values declared by the petitioner were grossly inflated/overstated?
- 7.3 Whether the Present Market Value declared for the exported goods was correct and the DEPB credit claimed exceeded the permissible limit?
- 7.4 Whether the petitioner was legally entitled to the DEPB credits claimed and if not to what extent the credit was excessive/illegally obtained?
- 7.5 Whether the transactions shown as purchases by the petitioner from Rattanlila & Co., Amit Impex, Mangali Ceramics, Bharti Rang Udyog and other entities were fabricated/paper transactions?
- 7.6 Whether some of the alleged purchases of calcium stearate were made by the petitioner after the exports and if so, what effect that has on the export transactions?
- 7.7 Whether the movement of money through bank accounts of the petitioner demonstrates circular movement/diversion/withdrawal of export proceeds?
- 7.8 Whether Fair deal Building Chemicals, Sharjah was an independent foreign purchaser or was connected with the persons controlling/associated with the petitioner?
- 7.9 Whether the values declared in the Dubai Bills of Entry/records constitute reliable evidence that the FOB values declared in India were grossly inflated?
8. The effect of the acceptance of the closure report by the special court



vis-a-vis the SCN issued and the issues raised therein requires determination of factual aspects and adducing of evidence and cannot be gone into in a writ petition.

9. The Supreme Court in *Whirlpool Corpn. v. Registrar of Trade Marks*, (1998) 8 SCC 1 held that writ jurisdiction may be exercised in three contingencies notwithstanding the availability of an alternative remedy:

“15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. **But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.** There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

(Emphasis supplied)

9.1 After the authoritative decision in *Canon India Pvt. Ltd.* (supra) on the issue of jurisdiction of the proper authority to issue the SCN, the case does not fall within the exceptions carved out by the Supreme Court and it is not a case for exercising writ jurisdiction at this stage.

10. The writ petition is disposed of with liberty to the petitioner to file afresh response, if so desired, to the SCN within eight weeks from today.



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The respondent shall proceed with the SCN in accordance with law after providing an opportunity of hearing to the petitioner. The petitioner shall be at liberty to avail of remedies in accordance with law, if aggrieved by the decision.

AVNEESH JHINGAN, J

SHAIL JAIN, J

SEPTEMBER 22, 2026

-‘JK’

Reportable: **Yes**