Two SCNs Arising from a Common Investigation Retain Separate Legal Identity and Stay in One Does Not Bar Adjudication of the Other

The Hon'ble Delhi High Court in ***A V International & Anr. v. Additional Director General, Directorate of Revenue Intelligence & Ors. [W.P.(C) No. 16149/2023 and W.P.(C) No. 5024/2024 dated August 07, 2026]*** declined to interfere with the Order-in-Original passed pursuant to the First SCN and held that two Show Cause Notices (**"SCNs"**) arising out of a common investigation conducted by the Directorate of Revenue Intelligence (**"DRI"**) retain their independent legal identity, notwithstanding interconnected facts, appointment of a common Adjudicating Authority and a joint hearing. Consequently, an interim stay granted by a writ court in respect of one SCN cannot, by itself, bar adjudication of the other SCN, since an interim order has to be construed on its own terms and it is not permissible to enlarge its scope by implication.

Facts:

M/s A V International & Anr. (**"the Petitioners"**) are engaged in the business of importing and trading signage materials, principally from China and Taiwan. In the year 2016, the DRI initiated an investigation on allegations of mis-declaration and undervaluation of imported goods, during the course whereof, searches were conducted, certain goods were seized and thereafter provisionally released on furnishing of bond and bank guarantee.

Upon completion of the investigation, the DRI issued Show Cause Notice No. 11/2017 dated March 27, 2017 (**"First SCN"**) pertaining to the goods seized during the search, proposing confiscation along with consequential penalties. After a gap of three years, Show Cause Notice No. 16/2020 dated May 11, 2020 (**"Second SCN"**) was issued pertaining to the Petitioners' earlier imports, proposing recovery of customs duty along with interest and penalty under Section 28 of the Customs Act, 1962 (**"the Customs Act"**).

On October 13, 2020, the Principal Commissioner of Customs (Import), ICD, Tughlakabad, was appointed as the common Adjudicating Authority for both the SCNs, whereafter common notices of personal hearing were issued and both the matters were taken up together. Pursuant to the judgment of the Hon'ble Supreme Court in ***Canon India Pvt. Ltd. v. Commissioner of Customs*** **[2021 (376) ELT 3 (SC)],** the CBIC issued an Instruction dated March 17, 2021 directing that such matters be transferred to the Call Book. Consequent to the amendments introduced by the Finance Act, 2022, the matters were withdrawn from the Call Book, the period for adjudication recommenced in terms of Section 28(9A) of the Customs Act, and the competent authority granted an extension of time on March 06, 2023 for completion of adjudication.

Since no adjudication order had been passed in respect of the Second SCN, the Petitioners filed W.P.(C) No. 16149/2023, *inter alia*, contending that the proceedings had become time-barred under Section 28(9) of the Customs Act and that the extension was neither valid nor communicated to them. By order dated December 14, 2023, the Hon'ble High Court stayed further proceedings pursuant to the Second SCN.

Notwithstanding the said stay, the Adjudicating Authority proceeded to adjudicate the First SCN and passed the Order-in-Original dated February 01, 2024 (**"Impugned Order"**). Aggrieved thereby, the Petitioners filed W.P.(C) No. 5024/2024, contending that since both SCNs emanated from the same investigation and were being adjudicated together by the same authority as one composite adjudication, the Revenue could not have segregated the proceedings and adjudicated the First SCN in isolation while proceedings under the Second SCN remained stayed. The Impugned Order was also assailed on the grounds of violation of the principles of natural justice and non-supply of relied upon documents.

Issues:

- Whether an interim stay granted by the writ court in respect of one SCN operates as a bar against adjudication of another SCN arising from the same investigation, which was assigned to a common Adjudicating Authority and heard together?

- Whether the appointment of a common Adjudicating Authority and issuance of common notices of hearing converts two independent SCNs into one composite adjudication, precluding separate adjudication of each SCN?

- Whether writ jurisdiction under Article 226 of the Constitution of India ought to be exercised against the Order-in-Original when an effective and efficacious statutory remedy of appeal before the CESTAT is available?

Held:

The Hon'ble Delhi High Court in ***W.P.(C) No. 16149/2023 and W.P.(C) No. 5024/2024*** held as under:

- **Observed that,** the two SCNs were issued on different dates and relate to different subject matters – the First SCN concerns the goods seized during the investigation and proposes confiscation with consequential penalties, whereas the Second SCN concerns earlier imports and proposes recovery of customs duty, interest and penalty under Section 28 of the Customs Act. Each SCN, therefore, has an independent statutory foundation and gives rise to a separate adjudicatory proceeding.

- **Noted that,** merely because both SCNs originate from the same investigation, or because they were entrusted to a common Adjudicating Authority and heard together for administrative convenience, they do not lose their separate legal identity. No provision of the Customs Act mandates that such notices must necessarily culminate in one composite order or that adjudication of one cannot proceed independently of the other.

- **Observed that,** a plain reading of the interim order dated December 14, 2023 shows that the stay was confined only to further proceedings pursuant to the Second SCN and neither stayed the adjudication of the First SCN nor restrained the Adjudicating Authority from proceeding in respect thereof. An interim order has to be construed on its own terms and it is not permissible to enlarge its scope by implication. In the absence of any express restraint, the mere pendency of the writ petition could not, by itself, prohibit the Adjudicating Authority from proceeding with the First SCN.

- **Held that,** administrative convenience in conducting a common hearing cannot override the statutory character of two independent proceedings. The appointment of a common Adjudicating Authority or issuance of common notices of hearing cannot create a legal bar against separate adjudication if otherwise permissible under the statute.

- **Held that,** the grievances relating to non-supply of relied upon documents and denial of adequate opportunity of hearing raise disputed questions requiring examination of the adjudication record, which can appropriately be examined by the CESTAT in exercise of its appellate jurisdiction. No exceptional circumstance was made out warranting interference with the Impugned Order under Article 226, and liberty was granted to the Petitioners to avail the statutory remedy of appeal before the CESTAT.

- **Refrained** from expressing any opinion on the merits of the rival contentions concerning limitation under Section 28(9) of the Customs Act, the Call Book mechanism, the validity of the extension dated March 06, 2023 and the effect of its non-communication, keeping all questions of fact and law open to be urged before the appropriate forum.

- **Directed that,** the interim order dated December 14, 2023 stands vacated and the Revenue shall be at liberty to proceed with the adjudication of the Second SCN in accordance with law, subject to affording the Petitioners an effective opportunity of hearing and ensuring due compliance with the principles of natural justice before passing any final order.

Our Comments:

Section 28(9) of the Customs Act prescribes the time limit within which the proper officer is required to determine the amount of duty or interest – six months from the date of notice in cases not involving collusion, wilful mis-statement or suppression of facts, and one year in cases involving such elements, extendable by a senior officer for a further like period where sufficient cause is shown. Section 28(9A), inserted by the Finance Act, 2018, carves out specific circumstances – including where an interim order of stay has been passed by a court or where the Board has directed that the notice be kept pending (i.e., the Call Book mechanism) – in which the clock under Section 28(9) remains suspended and recommences once the reason ceases to exist. The interplay of these provisions with the CBIC Instruction dated March 17, 2021 (issued in the wake of *Canon India*) and the subsequent withdrawal of matters from the Call Book after the Finance Act, 2022, is precisely what the Court has consciously left open for determination by the Adjudicating Authority.

The judgment reaffirms two settled principles. First, an interim order must be read strictly on its own terms – a stay qua one proceeding cannot be stretched by implication to halt a distinct proceeding, even where both share a common investigative origin, a common Adjudicating Authority and a common hearing. Secondly, where an effective and efficacious alternate remedy exists, writ jurisdiction is exercised only in exceptional circumstances, as consistently held by the Hon'ble Supreme Court in ***Whirlpool Corporation v. Registrar of Trade Marks [(1998) 8 SCC 1]*** *and reiterated in the GST context in* ***Assistant Commissioner of State Tax v. Commercial Steel Ltd. [2021 SCC OnLine SC 884],*** wherein it was held that writ interference is warranted only in cases of breach of fundamental rights, violation of natural justice, excess of jurisdiction or challenge to the vires of the statute.

On the limitation front, it is pertinent to note that the Hon'ble Delhi High Court in ***Vos Technologies India Pvt. Ltd. v. The Principal Additional Director General & Anr. [2024:DHC:9493-DB]*** had taken a stern view against SCNs kept pending in the Call Book for inordinately long periods, holding that the flexibility of "where it is possible to do so" under the pre-amendment regime does not sanction indefinite adjudication, and the said issue is presently engaging the attention of the Hon'ble Supreme Court in ***Union of India & Ors. v. GMR Airport Infrastructure Ltd.*** **[SLP (Civil) No. 5392/2025]**. Per contra, the Revenue in the present case relied upon ***Pranij Heights India Pvt. Ltd. v. Joint Commissioner of Customs [2025:DHC:11343-DB] and Shri Ram Agro Chemicals Pvt. Ltd. v. Union of India & Ors. [2019 SCC OnLine P&H 4918]*** for the proposition that mere non-communication of the extension order to the noticee does not invalidate either the SCN or the adjudication proceedings. Since the present proceedings are governed by the amended Section 28 (post Finance Act, 2018), taxpayers would be well advised to distinguish the pre-amendment jurisprudence while contesting limitation.

The ratio of this decision would apply *mutatis mutandis* under the GST regime as well, where multiple SCNs under Sections 73/74 of the CGST Act, 2017 are often issued for different tax periods or on different subject matters against the same taxpayer arising out of a single investigation. Each such notice constitutes an independent proceeding, and a stay obtained in respect of one notice or period would not, absent express restraint, arrest the adjudication of the others. Notably, Section 75(1) of the CGST Act similarly excludes the period of stay granted by a court from the computation of the limitation period for issuance of orders under Sections 73(10) and 74(10). Taxpayers seeking interim protection in writ proceedings must, therefore, ensure that the relief prayed for and granted expressly covers all connected notices and proceedings, since courts will not enlarge the scope of an interim order by implication.

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