



2026:DHC:3292



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

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Reserved on: 8th April, 2026

Pronounced on: 21st April, 2026

+ **W.P.(C) 4502/2026, CM APPL. 21954/2026 & CM APPL.
21955/2026**

SANDEEP KUMAR

PROPRIETOR- M/S N. BROTHERS OVERSEAS

R/O H. NO.- A-8, BLOCK A, SHASTRI NAGAR,

DELHI 110052

....PETITIONER

Through: Mr. Prateek Bhadana, Adv.

versus

PRINCIPAL COMMISSIONER OF CUSTOMS (IMPORT)

AIR CARGO COMPLEX

NEW CUSTOM HOUSE, NEAR IGI AIRPORT,

NEW DELHI 110037.

TEL NO.:- 011 2565 2970

Email ID:-commraccimp-cusdel.nic.in

.....RESPONDENT

Through:

+ **W.P.(C) 4504/2026, CM APPL. 21970/2026 & CM APPL.
21971/2026**

SANJAY KUMAR

PROPRIETOR- M/S SANJAY INTERNATIONAL

R/O H. NO.- 453, GALI NO.2, NEAR HUDA PUBLIC

SCHOOL,

RAJ NAGAR, PANIPAT, HARYANA-132103 **....PETITIONER**

Through: Mr. Prateek Bhadana, Adv.

versus



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**PRINCIPAL COMMISSIONER OF CUSTOMS (IMPORT)
AIR CARGO COMPLEX**

NEW CUSTOM HOUSE, NEAR IGI AIRPORT,
NEW DELHI 110037.

E-mailID:-commraccimp-cusdel.nic.in

.....RESPONDENT

Through:

CORAM:

HON'BLE MR. JUSTICE NITIN WASUDEO SAMBRE

HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT

AJAY DIGPAUL, J.

1. These two writ petitions, being W.P.(C) 4502/2026 and W.P.(C) 4504/2026, arise out of the same adjudication proceedings and challenge the same Order-in-Original¹ dated 01.08.2025 passed by the Principal Commissioner of Customs (Imports). Since the issues raised in both petitions arise from the same show cause proceedings and the same adjudication order, they are being disposed of by this common judgment.

2. The petitioner in W.P.(C) 4502/2026 is Sandeep Kumar, stated to be the proprietor of M/s N. Brothers Overseas. The petitioner in W.P.(C) 4504/2026 is Sanjay Kumar, stated to be the proprietor of M/s Sanjay International.

3. On 10.10.2021, search proceedings were conducted by the Income Tax Authorities at the residential premises of family members of co-noticee Zakir Khan, during which certain electronic devices were seized.

¹ Hereinafter "OIO"



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Thereafter, on 18.10.2021, acting on intelligence received from the Income Tax Authorities indicating alleged under-valuation and mis-declaration, the Directorate of Revenue Intelligence², Delhi Zonal Unit, conducted search proceedings under panchnama at the residential premises of the family members of the said co-noticee. Statements of co-noticees under Section 108 of the Customs Act, 1962³ came to be recorded on different dates between 19.10.2021 and 06.11.2023.

4. The proceedings thereafter culminated in issuance of Show Cause Notice⁴ dated 12.10.2023 under Sections 28(4) and 124 of the Customs Act. The said notice was issued against the present petitioners and other co-noticees, and concerned allegations of under-valuation and mis-declaration in the import of various electronic goods and accessories through multiple firms described therein as proxy/dummy entities allegedly owned and controlled by one Zakir Khan. In the tabulation contained in the said notice, M/s N. Brothers Overseas and M/s Sanjay International were reflected at serial nos. 12 and 16, respectively.

5. After issuance of the aforesaid SCN, further statements of co-noticee Jitender are stated in the record to have been recorded on 06.11.2023 and 08.11.2023. Subsequently, a corrigendum dated 08.01.2024 came to be issued to the said SCN. The said corrigendum referred to the statements dated 06.11.2023 and 08.11.2023 of co-noticee Jitender and also added the statement dated 14.11.2023 of one Vijay Kumar.

² Hereinafter "DRI"

³ Hereinafter "Customs Act"

⁴ Hereinafter "SCN"



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6. The adjudication proceedings thereafter culminated in the passing of OIO dated 01.08.2025 by the Principal Commissioner of Customs (Imports), which is common to both the present petitioners and constitutes the impugned order in these writ petitions. By the said order, the adjudicating authority, *inter alia*, held that the imports in question were part of a larger arrangement involving under-valuation and mis-declaration through multiple proxy/dummy firms stated to be owned and controlled by Zakir Khan, and proceeded to impose penalties upon various noticees. Insofar as the present petitioners are concerned, penalty of ₹5,00,00,000/- was imposed upon petitioner Sandeep Kumar, proprietor of M/s N. Brothers Overseas, under Section 112(a)(i) of the Customs Act and a further penalty of ₹5,00,00,000/- was imposed upon him under Section 114AA of the Customs Act. Likewise, penalty of ₹5,00,00,000/- was imposed upon petitioner Sanjay Kumar, proprietor of M/s Sanjay International, under Section 112(a)(i) of the Customs Act and a further penalty of ₹5,00,00,000/- was imposed upon him under Section 114AA of the Customs Act.

7. Aggrieved by the aforesaid OIO dated 01.08.2025, Sandeep Kumar filed W.P.(C) 4502/2026 and Sanjay Kumar filed W.P.(C) 4504/2026 before this Court, wherein the petitioners have sought substantially identical relief, i.e., quashing/recalling of the OIO dated 01.08.2025 arising out of adjudication of SCN dated 12.10.2023.



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Submissions on behalf of the petitioners

8. Learned counsel appearing for the petitioners submitted, at the outset, that the present writ petitions are maintainable notwithstanding the availability of an alternate statutory remedy. It was contended that the existence of an appellate remedy does not operate as an absolute bar to the exercise of writ jurisdiction where the impugned proceedings are *ex facie* without jurisdiction. According to learned counsel, the present case falls within the well-recognised exception to the rule of alternate remedy, inasmuch as the challenge raised is not merely to the correctness of the findings returned in adjudication, but to the very legality and jurisdictional validity of the proceedings culminating in the impugned OIO dated 01.08.2025.

9. Elaborating the above submission, learned counsel argued that the proceedings are vitiated at multiple stages on the ground of limitation and want of jurisdiction. It was submitted that the SCN dated 12.10.2023, the corrigendum dated 08.01.2024, and the impugned OIO dated 01.08.2025 are all liable to be examined by this Court in exercise of jurisdiction under Article 226 of the Constitution, as the challenge turns on admitted dates and statutory timelines and does not involve any disputed question of fact requiring relegation to the appellate forum. It is submitted that where proceedings are alleged to be *non-est*, *void ab initio*, or rendered without jurisdiction, the writ court would be justified in entertaining the petitions.



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10. In support of the above submission, learned counsel placed reliance on the decision of the Hon'ble Supreme Court in ***J. Sri Nisha v. Special Director, Adjudicating Authority, Directorate of Enforcement and Another***⁵, to contend that interference at the stage of SCN or consequential proceedings is permissible in exceptional circumstances, *inter alia*, where the notice suffers from patent lack of jurisdiction, reflects non-application of mind, or results in violation of principles of natural justice. Reliance was also placed on the judgment of the Hon'ble Supreme Court in ***Magadh Sugar and Energy Limited v. State of Bihar and Others***⁶, to submit that the writ court may entertain a petition where the authority is shown to have acted without jurisdiction.

11. Learned counsel further submitted that the corrigendum dated 08.01.2024 could not, in law, have been issued under Section 154 of the Customs Act, if its effect was to introduce new facts, statements, or substantive material after issuance of the original SCN. It was argued that such a corrigendum travels beyond the limited scope of correction of clerical, typographical, or arithmetical errors and, in substance, partakes the character of a supplementary SCN.

12. It was next submitted that, even proceeding on the dates emerging from the record, the impugned OIO dated 01.08.2025 was passed beyond the statutory period contemplated under Section 28(9) of the Customs Act. It was contended that the reference in the impugned order to an extension having been sought on 03.10.2024 and granted upto

⁵ 2026 SCC OnLine SC 517

⁶ 2021 SCC OnLine SC 801



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11.10.2025 is unsupported by any valid communication on record. In this regard, it was argued that while the SCN and corrigendum bear DIN particulars, no DIN has been disclosed in relation to the alleged extension, thereby casting serious doubt on its existence and validity.

13. Learned counsel also submitted that the alleged extension of time for adjudication, even as recorded in the impugned order, was never put to the petitioners nor were the reasons communicated to them. It was urged that such extension, affecting substantive rights of the noticees, could not have been affected without notice and opportunity. In aid of this submission, reliance was placed on the decision in ***Shri Ram Agro Chemicals Pvt. Ltd. v. Union of India and Others***⁷.

14. Learned counsel further submitted that the SCN having been issued under Sections 28(4) and 124 of the Customs Act, its issuance was required to strictly conform to Section 28BB. It was contended that Section 28BB mandates completion of investigation, culminating in issuance of notice under Section 28(1) or Section 28(4), within two years from the date of the search initiating such investigation. According to learned counsel, in the present case, the investigation was not concluded within the said period, inasmuch as the statement of co-noticee Jitender under Section 108 of the Customs Act came to be recorded only on 06.11.2023, i.e. after expiry of two years from 18.10.2021, and the corrigendum to the SCN was thereafter issued on 08.01.2024. It was thus submitted that the SCN dated 12.10.2023, read with the corrigendum

⁷ 2019 SCC OnLine P&H 4918



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dated 08.01.2024, must be treated as having been issued beyond the period prescribed under Section 28BB and is therefore *non-est* in law. Learned counsel submitted that once the very initiation of proceedings is contrary to the statutory mandate, the entire proceedings founded thereon, including the impugned order, stand vitiated and are liable to be quashed.

15. On the aforesaid basis, learned counsel submitted that the challenge raised by the petitioners is one that goes to the root of jurisdiction and maintainability of the adjudicatory proceedings themselves, and therefore the present writ petitions are liable to be entertained by this Court without relegating the petitioners to the alternate statutory remedy.

Submissions on behalf of the respondent

16. *Per contra*, Mr. Gibran Naushad, learned Senior Standing Counsel appearing for the respondent, opposed the maintainability of the present writ petitions and submitted that no case is made out for bypassing the statutory appellate remedy available against the impugned OIO dated 01.08.2025. He submitted that the challenge raised by the petitioners does not disclose any such patent lack of jurisdiction as would warrant interference by this Court in exercise of jurisdiction under Article 226 of the Constitution at the first instance.

17. Learned counsel submitted that the petitioners' contention founded on Section 28(9) of the Customs Act is misconceived. According to him,



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the impugned order itself records that extension of time for adjudication had been granted by the competent authority on 03.10.2024 upto 11.10.2025 and, therefore, the adjudication culminating in the impugned order dated 01.08.2025 was well within time. He submitted that the mere fact that the said extension was not separately communicated to the petitioners would not render the adjudication void.

18. In support of the aforesaid submission, Mr. Naushad placed reliance on the decision of this Court in *Pranij Heights India Pvt. Ltd. v. The Joint Commissioner of Customs*⁸, to contend that non-communication of an order extending time under Section 28 of the Customs Act is not fatal, since the provision does not mandate prior communication of such extension. He submitted that the petitioners' reliance on the judgment of the Punjab and Haryana High Court in *Shri Ram Agro Chemicals Pvt. Ltd. (Supra)* is misplaced, particularly when, according to learned counsel, the statutory scheme under Section 28 stands on a different footing and the said decision has also been carried further in challenge.

19. Learned counsel further submitted that the petitioners' reliance on Section 28BB of the Customs Act is equally untenable. According to him, even on the dates as set out by the petitioners themselves, the first search in the matter was carried out on 18.10.2021 and the SCN came to be issued on 12.10.2023, i.e. within the period of two years contemplated under Section 28BB. It was contended that the petitioners are incorrectly

⁸ W.P.(C) 14733/2024



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seeking to equate the corrigendum dated 08.01.2024 with the SCN itself, whereas the corrigendum issued under Section 154 of the Customs Act cannot alter the fact that the SCN had already been issued within limitation.

20. Learned counsel submitted that all the other grounds now sought to be urged by the petitioners, including the challenge relating to the corrigendum, alleged non-supply of relied upon documents, retraction of statements, denial of cross-examination, and alleged non-compliance of statutory requirements, stand dealt with in detail in the impugned OIO under the discussion and findings returned by the adjudicating authority. He submitted that the impugned order is an appealable order and the petitioners ought to be relegated to the statutory remedy available to them in accordance with law.

21. Mr. Naushad also pointed out that the petitioners did not participate in the adjudication proceedings despite opportunities having been granted by the adjudicating authority for personal hearing. Referring to the recording in the impugned order that no one appeared on behalf of several noticees, including the present petitioners, it was submitted that a party which has chosen not to avail the opportunity of personal hearing before the adjudicating authority cannot be permitted to invoke the extraordinary writ jurisdiction of this Court as a substitute for the statutory appellate mechanism.



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22. On the aforesaid basis, learned counsel submitted that the present writ petitions do not fall within any recognised exception to the rule of alternate remedy and are liable to be dismissed as not maintainable.

Analysis & Conclusion

23. Having heard learned counsel for the parties and having perused the record, this Court finds that a few principal issues emerge for consideration and require determination in the present matter. These are: whether the corrigendum dated 08.01.2024 merely corrected the SCN dated 12.10.2023 or materially supplemented it in a manner having bearing on limitation and jurisdiction; whether a valid extension in law and on record existed so as to sustain the adjudication under Section 28(9) of the Customs Act; whether Section 28(9) requires communication of such extension to the noticee and, if not so communicated, what legal consequence follows; whether, for the purposes of Section 28BB of the Customs Act, limitation is to be tested solely with reference to the date of the original SCN or whether subsequent investigative steps and the corrigendum can affect its validity; and, ultimately, whether the grounds urged by the petitioners bring the present case within the recognised exceptions to the rule of alternate remedy.

24. At the outset, this Court deems it apposite to note that it is well settled that, notwithstanding the plenary nature of the jurisdiction vested in this Court under Article 226, the writ court would ordinarily refrain



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from entertaining a petition where an efficacious alternate statutory remedy is available. The recognised exceptions to this rule are limited and stand settled in a catena of decisions of the Hon'ble Supreme Court, including *Whirlpool Corporation v. Registrar of Trade Marks, Mumbai*⁹ and *Harbanslal Sahnia v. Indian Oil Corpn. Ltd.*¹⁰

25. Since the general principles governing writ interference in the face of an alternate statutory remedy stand settled, this Court now proceeds to examine the specific issues canvassed before it. The first of these is whether the corrigendum dated 08.01.2024 merely corrected the SCN dated 12.10.2023 or materially supplemented it in a manner bearing upon limitation and jurisdiction, and, allied thereto, whether a valid extension in law and on record existed so as to sustain the adjudication under Section 28(9) of the Customs Act. In this regard, it is relevant to note that, in the impugned OIO, the Adjudicating Authority took note of the objection of the noticees that the corrigendum reflected a continuation of investigation after issuance of the SCN, travelled beyond the limited scope of Section 154 of the Customs Act, was not a mere clerical correction, and in substance amounted to a supplementary SCN. The Adjudicating Authority, however, rejected the said objection and observed that the corrigendum was *nothing but* the statement dated 06.11.2023 of co-noticee Jitender Kumar recorded under Section 108 of the Customs Act, and that the same neither enhanced nor reduced the duty demand against Zakir Khan or any other noticee. The authority

⁹ (1998) 8 SCC 1

¹⁰ (2003) 2 SCC 10



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further noted that Jitender Kumar had already been referred to in the original SCN as a person actively involved in arranging and creating dummy import firms, and that such role stood corroborated by other statements already forming part of the record.

26. Proceeding to the next limb of challenge, namely, the petitioners' submission that an extension affecting substantive rights could not have been granted without notice and opportunity to the noticees, this Court finds that the said issue no longer remains *res integra*. The very question, founded on reliance upon ***Shri Ram Agro Chemicals Pvt. Ltd. (Supra)***, already stands considered by this Court in ***Pranij Heights India Pvt. Ltd. (Supra)***, wherein it was held that although as a matter of prudence the Customs Department ought to intimate the grant of extension to the concerned parties, non-communication thereof would not, by itself, constitute a fatal error, since Section 28 of the Customs Act does not stipulate communication of such extension as a mandatory pre-condition to its validity. The submission of the petitioners to the contrary must, therefore, be examined in the light of the aforesaid position of law. The relevant portion of ***Pranij Heights India Pvt. Ltd.*** is reproduced hereunder:

“14. The main ground which is raised by Mr. Prem Ranjan Kumar, ld. Counsel for the Petitioner is that the extension order was not communicated to the Petitioner and in support of the said plea, a decision of the Division Bench of the Punjab and Haryana High Court has been relied upon being ***Shri Ram Agro Chemical Pvt. Ltd. through its Director Shri Amit Jain Vs. Union of India & Ors., 2019 SCC OnLine P&H 4918***, where it has been observed as under:

“15. From the perusal of the above noting, it is evident that Commissioner has proposed extension but there is no order on



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the part of Chief Commissioner leaving aside application of mind and reasoned order. Commissioner of Customs in his affidavit dated 30.9.2019 has used word 'noting' which itself shows that no order of extension was passed and it is just a noting on the file on the part of authorities other than Chief Commissioner. As no order of extension, as otherwise vehemently pleaded by Mr. Bindlish, has been passed, contention on behalf of the respondents that Chief Commissioner has granted extension of one year to adjudicate impugned show cause notice is ill founded.

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23. From the reading of sub-section (9) and (9A) of Section 28 of 1962 Act with judgment of this Court in the case of *A.B. Sugar Ltd. v. State of Punjab*, 2009 SCC OnLine P&H 7874, *Aabhas Spinners Pvt. Ltd. v. UOI*, (2010) 260 ELT 554 (P&H) and *Assistant Collector of Customs v. Charan Das Malhotra*, we can easily cull out that authorities are bound to;

(i) divulge circumstances under which Proper Officer was prevented from passing order [28(9)] or record reasons [28(9A)]

(ii) afford opportunity of hearing prior to passing order of extension and

(iii) communicate copy of extension order passed either under sub-section (9) or (9A) of Section 28 of the 1962 Act."

15. Mr. Gibran Naushad, Id. SSC at this stage submits that a Special Leave Petition against the said decision in ***Shri Ram Agro Chemical Pvt. Ltd. through its Director Shri Amit Jain (Supra)*** is pending before the Supreme Court in ***Petition for Special Leave to Appeal (C) No. 12063/2020*** titled '***Commissioner of Customs Ludhiana & Anr. v. Dee Kay Exports.***

16. The Court has considered the matter. The Punjab & Haryana High Court has drawn a parallel between Section 110 and Section 28 of the Customs Act. In the opinion of this Court, there is a difference in the scheme of the Act in Section 110 of the Customs Act, 1962 and Section 28 of the Customs Act, 1962. Under Section 28(9) of the Customs Act, 1962, an extension can be granted, however, there is no stipulation that the same extension order ought to be communicated. Whereas, under Section 110(2) of the Customs Act, 1962, the stipulation is that the person, from whom the goods were seized, has to be informed before the expiry of the period, if a further extension is to



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be given. Thus, these two provisions are not identical in nature. The relevant provisions read as under:

Section 28(9) of the Customs Act, 1962

“(9) The proper officer shall determine the amount of duty or interest under sub-section (8),—

*(a) within six months from the date of notice, *** in respect of cases falling under clause (a) of subsection (1);*

*(b) within one year from the date of notice, *** in respect of cases falling under sub-section (4).*

*[Provided that where the proper officer fails to so determine within the specified period, any officer senior in rank to the proper officer may, having regard to the circumstances under which the proper officer was prevented from determining the amount of duty or interest under sub-section (8), **extend the period specified in clause (a) to a further period of six months and the period specified in clause (b) to a further period of one year:***

Provided further that where the proper officer fails to determine within such extended period, such proceeding shall be deemed to have concluded as if no notice had been issued;]”

Section 110(2) of the Customs Act, 1962

“(2) Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

*[Provided that the Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, **extend such period to a further period not exceeding six months and inform the person from whom such goods were seized before the expiry of the period so specified:***

Provided further that where any order for provisional release of the seized goods has been passed under section 110A, the specified period of six months shall not apply.]”

17. Further, this Court is of the opinion that usually, the Customs Department ought to intimate any extension which is granted, to the parties concerned. But this would not be a fatal error in the present case as the communication of the same is not mandated in the provision, i.e., Section 28 of the Customs Act, 1962.



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18. Under these circumstances, the Petitioner has failed to make out any case for interference. The Order-in-Original dated 18th March, 2025 is an appealable order. Since an interim order was passed by this Court, the Petitioner is permitted to file an appeal within a period of one month from today, before the Commissioner of Customs (Appeals).”

27. The next issue concerns the petitioners’ reliance on Section 28BB of the Customs Act and the question whether limitation thereunder is to be tested only with reference to the date of the original SCN or whether subsequent investigative steps and the corrigendum could affect its validity. The respondent has contended that the first search in the matter was carried out on 18.10.2021 and the SCN was issued on 12.10.2023, i.e. within the period of two years prescribed under Section 28BB, and that the petitioners are erroneously seeking to conflate the corrigendum with the original SCN. This issue was also specifically raised before the Adjudicating Authority and finds due notice in the impugned OIO. The Adjudicating Authority dealt with the same by proceeding on the basis that the SCN stood issued on 12.10.2023, and by treating the corrigendum merely as incorporating the statement of co-noticee Jitender Kumar without altering the duty demand.

28. Be that as it may, this issue raised in the present petition can be raised before the appellate authority in proceedings under Section 128 of the Customs Act.

29. We, therefore, find no cause to interfere with the impugned OIO and grants liberty to the petitioners to avail of such remedies as may be available to it in accordance with law.



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30. This Court once again makes it clear that it has not examined or expressed any opinion on the merits of the case and that all rights and contentions of the parties in that regard are left open.

31. It is further clarified that, for the purposes of computing limitation before the appellate authority, the period during which the petitioners were pursuing the present proceedings before this Court shall stand excluded.

32. For all the aforesaid reasons, the present writ petitions, along with pending applications are dismissed.

**AJAY DIGPAUL
(JUDGE)**

**NITIN WASUDEO SAMBRE
(JUDGE)**

APRIL 21, 2026/ar/yr