



2026:DHC:8757-DB



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

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Judgment reserved on: 24.08.2026***Judgment pronounced on: 06.10.2026******Judgment uploaded on: 06.10.2026***# **CNR No. DLHC010307342024**+ **W.P.(C) 7322/2024****M/S KUKU OVERSEAS****.....Petitioner****Through: Mr. Akhil Krishan Maggu, Mr. Vikas Sareen, Ms. Oshin Maggu, Mr. Aryan Nagpal, Ms. Palak Sarna, Advs.****versus****COMMISSIONER OF CUSTOMS & ANR.Respondents****Through: Mr. Gibran Naushad, SSC with Mr. Suraj Shekhar Singh, Mr. Hasan Haider, Mr. Anish Mishra, Advs.****CORAM:****HON'BLE MR. JUSTICE ANIL KSHETARPAL****HON'BLE MR. JUSTICE AMIT MAHAJAN****J U D G M E N T****ANIL KSHETARPAL, J.:**

1. The present Writ Petition has been filed by the Petitioner, M/s Kuku Overseas, invoking the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India. The Petitioner initially approached this Court complaining of prolonged non-finalisation of nine Bills of Entry which, according to the Petitioner, had remained provisionally assessed under Section 18 of the Customs Act, 1962 [the 'Act'] for several years. The principal grievance of the Petitioner was that, despite the passage of more than nine years, the provisional assessments had not been finalised and the bank guarantees furnished

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W.P.(C) 7322/2024

Page 1 of 17



2026:DHC:8757-DB



by the Petitioner in connection therewith continued to remain outstanding.

2. The Petitioner, accordingly, seeks the following reliefs:-

“(i) issue a writ of mandamus order direction thereby directing the respondents to grant NOC and allow the release of the bank guarantees of INR 19,19,400/- submitted by the petitioner for provisional assessment of bill of entry numbers 7101786 dated 17.10.2014 and 9161421, 9161619, 9159800, 9161524, 9160667, 9160108, 9161256, 9160186 all dated 07.05.2015; And / Or;

(ii) issue a writ of prohibition for restraining the respondents from initiation of proceedings to finalise the provisional assessment of bill of entry numbers 7101786 dated 17.10.2014 and 9161421, 9161619, 9159800, 9161524, 9160667, 9160108, 9161256, 9160186 all dated 07.05.2015 filed by the petitioner, And/Or,

(iii) pass such other or further order/s which this Hon'ble Court may deem fit and proper in the interest of justice.”

3. The controversy, however, has undergone a material change during the pendency of the present proceedings. An Order-in-Original dated 21.01.2022 had already been passed in respect of one of the Bills of Entry, namely, Bill of Entry No. 7101786 dated 17.10.2014. Further, during the pendency of the present Writ Petition, two separate Orders-in-Original dated 31.03.2026 and 15.06.2026 have also been passed in respect of the remaining Bills of Entry.

4. Thus, the very premise on which the Petitioner approached this Court, namely, that the assessments continued to remain pending without adjudication, no longer survives in the same form. More importantly, the Order-in-Original dated 21.01.2022, which had already been passed prior to the institution of the present Writ Petition, was not disclosed by the Petitioner in the Writ Petition.

5. In these circumstances, the principal question before this Court



2026:DHC:8757-DB



is whether the present Writ Petition ought to be kept pending in view of the order dated 02.05.2025 passed by the Supreme Court in Petition for Special Leave to Appeal (C) No. 5392/2025, titled ***Union of India & Ors. v. GMR Airport Infrastructure Ltd.***, or whether, in view of the subsequent adjudication orders and the availability of an efficacious statutory appellate remedy, the Petitioner ought to be relegated to such remedy.

FACTUAL MATRIX:

6. The Petitioner was engaged in the business of import of goods. During the relevant period, the Petitioner imported, *inter alia*, Christmas lights, sunlight bulbs, rope lights, LED rope lights, LED strips and assorted iron buckles from China.

7. In respect of the imported goods, the Petitioner filed nine Bills of Entry under Section 46 of the Act. The particulars of the Bills of Entry are as follows:

S. No	Bill of Entry No.	Date
1.	7101786	17.10.2014
2.	9161421	07.05.2015
3.	9161619	07.05.2015
4.	9159800	07.05.2015
5.	9161524	07.05.2015
6.	9160667	07.05.2015
7.	9160108	07.05.2015
8.	9161256	07.05.2015
9.	9160186	07.05.2015

8. According to the Petitioner, the goods were examined by the Customs authorities and the assessments were made provisionally

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W.P.(C) 7322/2024



2026:DHC:8757-DB



under Section 18(1) of the Act. The Petitioner furnished personal bonds as well as bank guarantees as security in connection with the provisional assessments, whereupon the goods were cleared for home consumption.

9. The total value of the bank guarantees furnished by the Petitioner is stated to be Rs.19,19,400/-.

10. The Petitioner claims that despite the passage of several years, the provisional assessments were not finalised and the bank guarantees continued to remain outstanding. The Petitioner asserts that it repeatedly approached the Customs authorities seeking information regarding the status of the assessments and release of the bank guarantees.

11. The Petitioner submitted an RTI application dated 19.07.2022 seeking information regarding the status of the bank guarantees. As no response was received, the Petitioner preferred an appeal dated 30.08.2022 before the first appellate authority under the Right to Information Act, 2005. The Petitioner thereafter received a response stating, *inter alia*, that the matter relating to the bank guarantees was pending as the Bills of Entry were provisional. The Petitioner thereafter addressed a communication dated 14.05.2024 to the Customs authorities seeking, *inter alia*, release of the bank guarantees and issuance of the requisite No Objection Certificate.

12. The present Writ Petition was thereafter instituted in the year 2024.



2026:DHC:8757-DB



13. It is, however, material to notice that an Order-in-Original dated 21.01.2022 had already been passed by the Joint Commissioner of Customs (Adjudication) in respect of Bill of Entry No. 7101786 dated 17.10.2014.

14. By the said Order-in-Original, the adjudicating authority ordered absolute confiscation of the goods imported under Bill of Entry No. 7101786 dated 17.10.2014 under Sections 111(d) and 111(m) of the Act. Penalties were also imposed upon the concerned persons under Section 112(b)(i) and Section 114AA of the Act.

15. The operative portion of the Order-in-Original dated 21.01.2022 reads as under:

“(i) I order for absolute confiscation of the goods imported vide bill of entry No. 7101786 dated 17.10.2014 under section 111(d) and 111(m) of the Customs Act, 1962.

(ii) I hereby impose penalty as under:-

Name of the Person/Firm	Section 112(b)(i) of the Customs Act, 1962	Section 114AA of the Customs Act, 1962
Shri Jitin Arora, Proprietor of M/s. Kukku Overseas	Rs.3,00,000/-	Rs.10,00,000/-
Shri Nitin Jindal	Rs.3,00,000/-	Rs.10,00,000/-
Shri Amarnath Jindal	Rs.3,00,000/-	Rs.10,00,000/-

16. Thus, when the present Writ Petition was instituted, an adjudication order had already been passed in respect of at least one of the Bills of Entry forming the subject matter of the present proceedings. The aforesaid fact, however, was not disclosed in the Writ Petition.

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2026:DHC:8757-DB



17. Thereafter, during the pendency of the present Writ Petition, two further Orders-in-Original dated 31.03.2026 and 15.06.2026 came to be passed by the Additional Commissioner of Customs in respect of the remaining Bills of Entry.

18. Consequently, the factual position as it obtains today is materially different from the position projected in the Writ Petition at the time of its institution. The assessments which were alleged to have remained pending for several years have since culminated in adjudication orders.

CONTENTIONS OF THE PARTIES:

19. Contentions of the Petitioner:

19.1. Learned counsel for the Petitioner submitted that the Petitioner had approached this Court on account of the extraordinary delay on the part of the Customs authorities in finalising the provisional assessments. It was submitted that the provisional assessments pertained to the years 2014-2015 and yet the Petitioner was deprived of the use of the bank guarantees amounting to ₹19,19,400/- for several years.

19.2. It was submitted that Section 18 of the Act does not prescribe an express period within which a provisional assessment is required to be finalised. However, according to the Petitioner, the absence of an express statutory period cannot confer an unlimited power upon the Customs authorities to keep a provisional assessment pending indefinitely.



2026:DHC:8757-DB



19.3. Reliance was placed upon the instructions contained in the Customs Manuals as well as the Customs (Finalization of Provisional Assessment) Regulations, 2018 and submits that provisional assessments are required to be finalised expeditiously. Further reliance was placed upon the decisions of the Punjab and Haryana High Court in *M/s Gupta Smelter Private Limited v. Union of India & Another*¹ and *Gupta Smelters Pvt. Ltd. v. Commissioner of Customs & Anr.*² to contend that even in the absence of an express statutory limitation, the power to finalise a provisional assessment has to be exercised within a reasonable period.

19.4. It was submitted that the delay in the present case was wholly unexplained and that the Petitioner ought not to be compelled to suffer indefinitely on account of the inaction of the Customs authorities. Learned counsel has also referred to the principle of judicial discipline and relied upon the judgment of the Supreme Court in *Union of India v. Kamlakshi Finance Corporation Ltd.*³, submitting that the authorities are required to act in accordance with the law declared by the competent judicial forums.

19.5. It was further submitted that, in view of the order dated 02.05.2025 passed by the Supreme Court in *Union of India & Ors. v. GMR Airport Infrastructure Ltd.*, this Court ought not to dispose of the present Writ Petition and should await the decision of the Supreme Court on the larger issue relating to delay in adjudication. According to learned counsel, the order dated 02.05.2025 indicates that the

¹ CWP No. 4134/2017 (O&M)

² CWP No. 21115/2019 (O&M)

³ 1991 (55) ELT 433 (SC)



2026:DHC:8757-DB



Supreme Court was examining the larger question concerning delay in adjudication and had directed that matters involving the said issue before the High Courts and Tribunals be deferred until an appropriate decision was taken.

20. Contentions of the Respondents:

20.1. *Per contra*, learned counsel for the Respondents opposed the prayer for keeping the present Writ Petition pending and submits that the factual foundation of the Writ Petition has substantially altered.

20.2. It was pointed out that an Order-in-Original dated 21.01.2022 had already been passed in respect of Bill of Entry No. 7101786 dated 17.10.2014, prior to the institution of the present Writ Petition. It was further pointed out that two further Orders-in-Original dated 31.03.2026 and 15.06.2026 have been passed during the pendency of the present proceedings.

20.3. It was submitted that the Petitioner has an efficacious statutory remedy of appeal under Section 128(1) of the Act against the aforesaid adjudication orders. It was submitted that all questions arising from the adjudication proceedings, including the grievance regarding delay, can appropriately be examined in the statutory appellate proceedings.

20.4. It was further submitted that the order dated 02.05.2025 passed by the Supreme Court in ***Union of India & Ors. v. GMR Airport Infrastructure Ltd.*** does not require the present Writ Petition to be kept pending. The said order was passed in proceedings concerning



2026:DHC:8757-DB



the larger issue of delay in adjudication and cannot be read as a direction to keep pending every matter in which delay had at some stage been alleged.

20.5. It was submitted that the controversy in the present case has also materially changed since the institution of the Writ Petition, inasmuch as adjudication orders have now been passed.

ISSUES FOR DETERMINATION:

21. In view of the aforesaid submissions, the following questions arise for consideration:

I. Whether, in view of the order dated 02.05.2025 passed by the Supreme Court in ***Union of India & Ors. v. GMR Airport Infrastructure Ltd.***, the present Writ Petition ought to be kept pending?

II. Whether, in view of the subsequent passing of the Orders-in-Original, the Petitioner ought to be relegated to the statutory appellate remedy available under Section 128(1) of the Act?

III. What relief, if any, ought to be granted to the Petitioner?

ANALYSIS & FINDINGS:

22. This Court has considered the submissions advanced on behalf of the parties and carefully perused the record.

23. The principal submission advanced on behalf of the Petitioner is that the present Writ Petition ought to be kept pending in view of the



2026:DHC:8757-DB



order dated 02.05.2025 passed by the Supreme Court in ***Union of India & Ors. v. GMR Airport Infrastructure Ltd.***

24. It would, therefore, be apposite to notice the relevant portion of the said order. The Supreme Court, while considering the petition for special leave against the judgment of this Court, recorded that the High Court had disposed of hundreds of petitions on the subject in question and that several matters had come up before the Supreme Court. The Supreme Court observed that, since the larger issues were being examined, if any matter came up before the Tribunal or any High Court on the subject in question, the hearing of such matter may be deferred until the Supreme Court took an appropriate call.

25. The aforesaid direction has to be understood in the context in which it was made. The Supreme Court was considering the challenge to the judgment of this Court on the issue of delay in adjudication and was seized of a large number of connected matters arising from that controversy. The order was passed in that backdrop and cannot be construed as a direction that every proceeding before every High Court or Tribunal in which an allegation of delay had at any earlier stage been raised must necessarily be kept pending irrespective of the subsequent developments in that proceeding.

26. In the present case, there is a fundamental factual distinction.

27. The grievance projected in the Writ Petition was that the provisional assessments of the nine Bills of Entry had not been finalised. The Petitioner sought, on that basis, a direction for release of the bank guarantees and a prohibition against the Customs authorities



2026:DHC:8757-DB



from initiating proceedings for finalisation of the provisional assessments.

28. However, the adjudication proceedings have since culminated in Orders-in-Original.

29. Even prior to the filing of the present Writ Petition, an Order-in-Original dated 21.01.2022 had been passed in respect of Bill of Entry No. 7101786 dated 17.10.2014. The Petitioner did not disclose the said order while instituting the present proceedings.

30. The non-disclosure assumes significance because the central grievance of the Petitioner in the Writ Petition was that the assessment relating to the aforesaid Bill of Entry continued to remain pending without adjudication. Once an adjudication order had already been passed, that factual assertion was no longer correct insofar as the said Bill of Entry was concerned.

31. This Court is conscious that the relief sought by the Petitioner also relates to the bank guarantees. However, the question whether the Petitioner is entitled to consequential relief in respect of the security furnished in connection with the import transactions has to be considered in the context of the adjudication orders which now govern the rights and liabilities of the parties.

32. The position has been further altered by the passing of two additional Orders-in-Original dated 31.03.2026 and 15.06.2026 during the pendency of the present Writ Petition. Thus, the remaining Bills of Entry have also been subjected to adjudication.



33. The present proceedings, therefore, cannot now be examined as though the provisional assessments continue to remain at the stage at which they stood when the Petitioner approached this Court.

34. Once an adjudication order has been passed, the Act itself provides a statutory appellate mechanism. Section 128(1) of the Act provides for an appeal to the Commissioner (Appeals) against, *inter alia*, a decision or order passed by an officer of Customs lower in rank than a Commissioner of Customs.

35. The availability of such statutory remedy assumes particular significance in the facts of the present case. The adjudication orders are not merely formal orders recording finalisation of the provisional assessments. In the case of Bill of Entry No. 7101786, the adjudicating authority has ordered absolute confiscation of the imported goods under Sections 111(d) and 111(m) of the Act and has also imposed penalties under Sections 112(b)(i) and 114AA of the Act.

36. Consequently, the controversy now involves the legality and validity of adjudicatory determinations made by the competent Customs authorities. Such determinations are ordinarily required to be examined in the first instance by the statutory appellate authority constituted under the Act.

37. The Court is also of the view that the question of delay, which constitutes the principal grievance of the Petitioner, is not rendered incapable of examination merely because the adjudication orders have now been passed. The Petitioner would be entitled to urge, before the



2026:DHC:8757-DB



competent appellate forum, such grounds as may be available to it in law, including the effect, if any, of the delay in the proceedings leading to the adjudication orders.

38. The statutory appellate forum would also be competent to examine the consequential issues arising from the adjudication orders in accordance with law.

39. It would, therefore, not be appropriate for this Court to retain the present Writ Petition merely because the Supreme Court is examining the larger issue concerning delay in adjudication in ***Union of India & Ors. v. GMR Airport Infrastructure Ltd.***

40. The controversy before the Supreme Court in the said proceedings and the controversy which now survives in the present Writ Petition are not identical.

41. In ***Union of India & Ors. v. GMR Airport Infrastructure Ltd.***, the Supreme Court was considering the challenge to the judgment of this Court dealing with the effect of substantial delay in adjudication proceedings and, in that context, directed that matters on the subject be deferred. The present case, however, has travelled considerably beyond the stage of mere pendency of adjudication. In the present case, adjudication orders have already been passed, including one order which had been passed even before the institution of the Writ Petition.

42. The distinction is material. The issue before this Court is not whether an adjudicating authority should now be directed to



2026:DHC:8757-DB



adjudicate proceedings which have remained pending for an inordinate period. Rather, the adjudication orders have already been made and the statutory appellate remedy against those orders is available to the Petitioner.

43. The principle that a writ court ordinarily does not entertain a petition where an efficacious statutory remedy is available is particularly relevant in the present circumstances. No exceptional circumstance has been demonstrated which would warrant this Court bypassing the statutory appellate mechanism.

44. It is equally relevant that the Petitioner seeks, by way of a writ of prohibition, to restrain the Customs authorities from initiating or completing the finalisation/adjudication process. That prayer has substantially become infructuous in view of the Orders-in-Original which have already been passed.

45. The relief of mandamus seeking release of the bank guarantees cannot be considered in isolation from the subsequent adjudication orders. The rights and liabilities of the parties have now to be examined in the light of those orders. It would not be appropriate for this Court, in exercise of its writ jurisdiction, to adjudicate upon the consequential relief without first permitting the statutory appellate forum to examine the legality and correctness of the adjudication orders.

46. There is another aspect which weighs with this Court.

47. The Petitioner approached this Court complaining that the



2026:DHC:8757-DB



Customs authorities had failed to finalise the provisional assessments for more than nine years. However, as noticed above, an Order-in-Original dated 21.01.2022 had already been passed in respect of Bill of Entry No. 7101786 dated 17.10.2014. The said order was not disclosed in the Writ Petition.

48. A party invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution is expected to make a full and candid disclosure of all material facts having a bearing on the relief sought. Where the very factual premise on which the writ jurisdiction is invoked has undergone a material change, such change must be brought to the notice of the Court.

49. In the present case, the non-disclosure of the Order-in-Original dated 21.01.2022 is material because the Petitioner sought a writ of prohibition against finalisation of the provisional assessment relating to the very Bill of Entry in respect of which the adjudication order had already been passed.

50. This Court is, therefore, not inclined to exercise its discretionary writ jurisdiction for the purpose of examining a grievance on the basis of a factual position which was not complete even at the time of institution of the proceedings and which has, in any event, subsequently undergone further material changes.

51. This Court has not examined, and expresses no opinion on, the merits of the Orders-in-Original dated 21.01.2022, 31.03.2026 and 15.06.2026. Likewise, no opinion is being expressed on the question whether the delay preceding the passing of the aforesaid orders has



2026:DHC:8757-DB



any legal consequence.

52. These questions are expressly left open to be urged by the Petitioner before the competent statutory appellate forum in accordance with law.

53. The Petitioner would also be at liberty to raise, before the appellate authority, all permissible contentions regarding the period during which the provisional assessments remained pending, the applicability and effect of the relevant statutory provisions, rules, regulations or administrative instructions, and the consequences, if any, of the delay in adjudication.

54. The fact that the present Writ Petition has been pending before this Court shall not preclude the Petitioner from availing the statutory remedy. The competent appellate authority shall consider any application for condonation of delay in filing the appeal, if such application is made, in accordance with law and on its own merits. Nothing stated in the present judgment shall be construed as an expression of opinion on such application or on the merits of the appeals.

55. For the aforesaid reasons, this Court is of the considered view that no useful purpose would be served by keeping the present Writ Petition pending merely to await the outcome of the proceedings before the Supreme Court in ***Union of India & Ors. v. GMR Airport Infrastructure Ltd.*** The factual and procedural position in the present case is materially different, particularly in view of the adjudication orders which have already been passed.



2026:DHC:8757-DB



CONCLUSION

56. In view of the foregoing discussion, the present Writ Petition is dismissed as not maintainable in its present form, with liberty to the Petitioner to avail the statutory remedy of appeal under Section 128(1) of the Customs Act, 1962 against the Orders-in-Original dated 21.01.2022, 31.03.2026 and 15.06.2026, in accordance with law.

57. It is clarified that this Court has not expressed any opinion on the merits of the aforesaid Orders-in-Original or on the Petitioner's contentions concerning the delay in finalisation/adjudication. All such contentions are left open to be urged before the Competent Appellate Authority.

58. If the Petitioner avails the statutory remedy, the Appellate Authority shall consider the same in accordance with law. The pendency of the present Writ Petition shall also be taken into consideration while examining any application for condonation of delay, if filed, without being influenced by any observation contained herein on the merits of the controversy.

59. The Writ Petition, along with all pending applications, is disposed of in the aforesaid terms.

ANIL KSHETARPAL, J.

AMIT MAHAJAN, J.

OCTOBER 06, 2026

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