

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 11TH DAY OF NOVEMBER 2015/20TH KARTHIKA, 1937

WP(C).No. 34057 of 2015 (F)

PETITIONER:

**SHRI.N.S.MAHESH, S/O.SREEDHARAN,
RESIDING AT NAMBIYATH HOUSE,
PALLURUTHY, KOCHI TALUK,
ERNAKULAM DISTRICT.**

BY ADV. SMT.P.VREMA

RESPONDENT:

**THE COMMISSIONER OF CUSTOMS,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
WILLINGDON ISLAND, COCHIN-682009.**

**BY ADV. SRI.JOHN VARGHESE,SC
BY SRI.THOMAS MATHEW NELLIMOOTTIL,SC**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 11-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

mbr/

WP(C).No. 34057 of 2015 (F)

APPENDIX

PETITIONER(S)' EXHIBITS :

- P1: TRUE COPY OF THE SHOW CAUSE CUM DEMAND NOTICE IN
F.NO.SIIB.40/2014 DATED 09.07.2015.**
- P2: TRUE COPY OF INTERIM REPLY DATED 08.10.2015.**
- P3 : TRUE COPY OF THE CALL LETTER DATED 09.10.2015.**
- P4 : TRUE COPY OF LETTER DATED 18.10.2015.**
- P5 : TRUE COPY OF THE ORDER DATED 20.10.2015.**

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.34057 OF 2015 (F)

Dated this the 11th day of November, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P5 order passed by the respondent, in an application filed by the petitioner seeking cross examination of various persons, prior to submitting formal objections to Ext.P1 show cause notice that was issued to him under Section 28 of the Customs Act, 1962. It is seen from the averments in the writ petition that, on receipt of Ext.P1 show cause notice, the petitioner had made a request for cross examination of all the Officers who assessed, audited and examined the impugned Bills of Entry, as also Officers who actually examined the goods and permitted clearance. There was also a request for cross examination of a co-noticee. The request for cross examination of the said persons was made before the respondent, who proceeded to pass Ext.P5 order giving detailed reasons as to why he was of the view that a cross examination of the persons sought for need not be granted to the petitioner. In Ext.P5, the respondent specifically deals with the request of the petitioner, and finds as follows:

“i. Cross Examination of all officers who assessed audited examined the impugned consignments.

The investigating unit has developed the case on the basis of documents recovered during investigation and other evidences and not relied on statements of any officers who examined/audited/assessed the consignment. Moreover said officers have discharged these functions as part of their official duty, based on documents provided by the importer. Further noticee No.2 has not given any reasons for examining the said officer, nor the evidences sought to be brought out from them. It is also learnt that the dockets of the bills of entry relied upon by investigation have already been supplied along with the show cause notice. However if required, noticee No.2 can obtain additional set of copies of documents from SIIB, under prior intimation to undersigned. Accordingly the request for cross examining all officers who assessed/audited/examined the impugned consignments cannot be acceded to.

ii. Cross Examination of co noticee Sri.Reji Cherian

Apart from a broad statement that noticee No.2 was seeking cross examination of Sri.Reji Cherian for rebutting the allegations of abetting evasion of duty by furnishing false and fabricated incorrect materials, no specific reasons or points have been attributed for seeking his cross examination. Further noticee No.2 has not given any specific fact that would emerge in his favour upon the cross examination of Sri.Reji Cherian. Further as Sri.Reji Cherian is a co noticee, this authority cannot direct him to be present for proceedings that may cause him to incriminate himself and therefore the request for cross examination of Sri.Reji Cherian cannot be acceded to.”

On a perusal of Ext.P5 order, and the reasons given by the respondent to deny the request of the petitioner for cross

examination, I do not find any illegality in the said order that would warrant an interference with the said order in these proceedings under Article 226 of the Constitution of India. The writ petition, in its challenge against Ext.P5 order, therefore fails, and is accordingly dismissed.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp/11/11/15