



W.P.No.32646 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2023

Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.32646 of 2023
and
W.M.P.No.32250 of 2023

Mr.Hitin Sachdeva

...Petitioner

Vs.

The Commissioner of Customs,
Chennai -II (Imports)
Customs House, No.60, Rajaji Salai,
Chennai -600 001.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondent to permit the petitioner to cross-examine the persons mentioned in the letter dated 10.10.2023 issued by the counsel for the petitioner to the respondent.

For Petitioner : Mr.G.Derrick Sam

For Respondent : Mr.B.Arvind Srevatsa
Junior Standing Counsel



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ORDER

With consent, the main Writ Petition itself is taken up for final disposal at the stage of admission itself.

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2. The prayer in the Writ Petition is for issuance of mandamus on the respondent to permit the petitioner to cross-examine the persons mentioned in the letter issued by the counsel for the petitioner to the respondent on 10.10.2023.

3. Mr.G.Derrick Sam, learned counsel for the petitioner would submit that the petitioner by virtue of their reply/letter, dated 10.10.2023 to the show cause notice dated 13.01.2023, has requested the respondent to provide certain documents, which have been relied on by the respondent for issuance of show cause notice dated 13.01.2023 and also to permit the petitioner to cross-examine 5 persons, based on whose statements, the respondent-Department has issued such show cause notice, whereas, the respondent, without considering the said request made by the petitioner in their letter dated 10.10.2023, has issued a notice dated 10.10.2023, fixing a



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date for personal hearing of the petitioner tomorrow at 11.00 a.m. (i.e.

17.11.2023). The learned counsel further submitted that it is the grievance of the petitioner that without acceding to the request made by the petitioner, for the third time, the respondent has issued a notice fixing the date of personal hearing on 17.11.2023, this being final opportunity granted by the respondent, and thereafter, the respondent will proceed to confirm the proposal made in the show cause notice, the petitioner prays for an appropriate direction since in the absence of the documents, which the respondent relied on in issuing the show cause notice and without permitting the petitioner to cross-examine five persons, the petitioner would not be in a position to file effective reply nor to defend themselves and same would also amounts to violation of principles of natural justice. Hence, the learned counsel prayed for appropriate direction.

4. Mr.B.Arvind Srevatsa , learned Junior Standing Counsel, who accepts notice on behalf of the respondent though raised a formal objection, however, submitted that, if any order in direction is issued, the same would be complied with.



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5. Considering the submissions made on either side and on perusal of documents, it is seen that the petitioner vide their reply dated 10.10.2023, to the show cause notice dated 13.01.2023, has sought for certain documents and also to allow the petitioner to cross-examine 5 persons and the details of which are as follows:-

- i) Provide legible copies of relied upon documents as mentioned in para 2.2 of the reply ;
- ii) Provide non RUDs as mentioned in para 2.3 of the reply;
- iii) Allow cross-examination of Shri Rajiv Kumar Verma, Shri Bipin Kumar Jha, Shri Gurvinder Singh Sabharwal, Shri Sandeep Kumar Dass and Shri Prince Bhatia;
- iv) Allow inspection of original case file

6. Thus, when the petitioner has made a specific request to the respondent vide their reply dated 10.10.2023 for provision of certain



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documents, which formed the basis for issuance of show cause notice and also for allowing the petitioner to cross-examine five persons based on whose statements, the respondent has issued the show cause notice, the respondent ought to have acceded to the request made by the petitioner. But, the respondent, without doing so, the respondent has issued a notice dated 10.10.2023 calling upon the petitioner to appear before him for personal hearing on 17.11.2023 at 11.00 a.m. and the respondent failed to take note of one main aspect that even during such personal hearing i.e. on 17.11.2023, the petitioner would make a similar request for provision of documents and other prayer (as sought in the reply letter dated 10.10.2023), since it appears that even during the previous personal hearings i.e. on 01.09.2023 and 10.10.2023, the petitioner has made a similar request, (i.e. for furnishing documents and permitting the petitioner to cross-examine 5 persons) in the event the respondent not accedes to the petitioner's request, the same would amount to violation of principles of natural justice and would also be fatal to the petitioner's case.



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6.1 Thus, considering the limited scope of the prayer sought for by the petitioner in this Writ Petition and that the apprehension expressed by the petitioner that the notice dated 10.10.2023, fixing the date of personal hearing of the petitioner tomorrow (17.11.2023) is last and final opportunity granted by the respondent, and thereafter, the respondent would proceed with the adjudication proceedings, by confirming the proposals contained in the show cause notice, which appears to be reasonable, this Court is of the view that unless and otherwise, the respondent provides the document and permits the petitioner to cross-examine the persons as mentioned in the reply, dated 10.10.2023, the petitioner would not be in a position to defend themselves, which would be highly prejudicial to their interest and would also amounts to violation of principles of natural justice. Therefore, this Court is inclined to issue the following directions:-

i) The respondent is directed to provide the documents as sought for by the petitioner, in their letter dated 10.10.2023 and grant time to the petitioner to file their reply and thereafter, permit the petitioner to cross-examine five persons, whose names were mentioned in the petitioner's reply



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dated 10.10.2023, for which purpose, the respondent is directed to issue summons to five persons by fixing a date for cross-examination, on which date, the petitioner shall be available without fail.

ii) The respondent, after completing the aforesaid exercise shall fix a date for personal hearing and thereafter, shall proceed with adjudication process in accordance with law.

7. With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

16.11.2023

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Index : yes/no

Neutral Citation : yes/no

Note : Issue order copy on 16.11.2023

To

The Commissioner of Customs,
Chennai -II (Imports)
Customs House, No.60, Rajaji Salai,
Chennai -600 001.

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Krishnan Ramasamy,J.,

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