



W.P.No.2865 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED:09.02.2024

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

**W.P.No.2865 of 2024**  
**and W.M.P.No.3107 of 2024**

V.Umashankar

... Petitioner

-VS-

The Additional Commissioner of Customs,  
Import Commissionerate,  
O/o.The Commissioner of Customs,  
Chennai II (Import),  
No.60, Rajaji salai, Customs House,  
Chennai-600 001.

... Respondent

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the impugned exparte Order-in-Original No.104320/2024 dated 05.01.2024, passed by the respondent and to quash the same, to the extent of order passed as against the petitioner at para 25(ix) of the impugned order, in so far as, the said exparte impugned order has



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been passed by the respondent without affording an opportunity of personal hearing, which is in clear violation to the principles of natural justice.

For Petitioner : Mr.S.Baskaran

For Respondent : Mr.Rajendran Raghavan, Sr. SC

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### **ORDER**

The petitioner challenges an Order-In-Original dated 05.01.2024 in so far as the penalty of Rs.5,00,000/- was imposed thereunder on the petitioner.

2. The petitioner states that he referred the importer of certain goods to a customs handling agent, and that his role was limited to making such reference. In such circumstances, the petitioner received a hearing notice dated 15.12.2023 for a hearing on 18.12.2023 at 12.00



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noon after the scheduled time of hearing. Therefore, the petitioner, by communication dated 21.12.2023 from his counsel, requested the hearing to be scheduled after 01.01.2024 in the afternoon session. Upon receipt of said communication, the hearing was fixed on 01.01.2024 at 5.00 p.m. Therefore, the petitioner, through his counsel, requested that the hearing be fixed on any other date, except 05.01.2024. The impugned order came to be issued under these facts and circumstances on 05.01.2024.

3. Learned counsel for the petitioner referred to the correspondence with the respondent and submitted that the petitioner was denied a reasonable opportunity of being heard. In addition, by inviting my attention to Section 117 of the Customs Act, 1962 (the Customs Act), learned counsel pointed out that the maximum penalty leviable under Section 117 is a sum of Rs.4,00,000/-. By referring to the impugned order, he points out that a penalty of Rs.5,00,000/- was imposed on the petitioner under



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Section 117.

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4. In response to these submissions, Mr.Rajendra Raghavan, learned senior standing counsel, submits that the petitioner was provided about three opportunities to make submissions. He also submits that the penalty was imposed not only under Section 117, but other applicable provisions.

5. The petitioner has placed on record the communications of 21.12.2023 and 01.01.2024 requesting for an adjournment of the proposed hearing. In fact, by communication dated 01.01.2024, through his counsel, the petitioner requested that the hearing be scheduled on any date except 05.01.2024 in the post noon session. The impugned order was issued on 05.01.2024. Undoubtedly, the petitioner was not provided a reasonable opportunity. In addition, on examining Section 117 of the Customs Act, I find that the sum of Rs.4,00,000/- is the ceiling with regard to imposition of penalty, whereas, in the impugned order, a penalty of Rs.5,00,000/- was



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imposed under Section 117. This is clearly unsustainable.

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6. For reasons set out above, the impugned order is quashed in so far as it imposes a penalty of Rs.5,00,000/- on the petitioner. As a corollary, the matter is remanded for reconsideration. After providing a reasonable opportunity to the petitioner, including a personal hearing, a fresh order shall be issued in respect of the petitioner within a maximum period of *six weeks* from the date of receipt of a copy of this order.

7. The writ petition is disposed of on the above terms. There will be no order as to costs. Consequently, connected miscellaneous petition is closed.

09.02.2024

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Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No



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**SENTHILKUMAR RAMAMOORTHY,J**

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**To**

The Additional Commissioner of Customs,  
Import Commissionerate,  
O/o.The Commissioner of Customs,  
Chennai II (Import),  
No.60, Rajaji salai, Customs House,  
Chennai-600 001.

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