



WEB COPY



-W.P.No.20683 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

WP.No.20683 of 2024
and W.M.P.Nos.22624 and 22625 of 2024

Nalin Gupta

.... Petitioner

Vs.

Commissioner of Customs,
Chennai-II Commissionerate,
Rajaji Salai, Customs House,
Chennai, Tamil Nadu – 600 001.

...

Respondents

Prayer:- Writ Petition is filed, under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for the records on the file of the respondent pertaining to the impugned show cause notice viz Show Cause No.131/2022-Gr-4 in F.No.S.Misc 131/2022-Gr-4 dated 28/09/2022 forbearing the respondent from adjudicating the show cause notice dated 28.09.2022 being barred by limitation in terms of Section 28(9) of the Customs Act, 1962 and proceedings are deemed to be concluded in view of second proviso of Section 28(9) of the Customs Act, 1962 and quash the same.

For Petitioner : Mr.A.Ganesh

For Respondents : Mr.Rajnish Pathiyil
Senior Panel Counsel



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ORDER

By consent of both sides, this Writ Petition is taken up and disposed of at the stage of admission itself.

2.Mr.Rajnish Pathiyil, learned Senior Panel Counsel, takes notice for the respondent.

3. This Writ Petition has been filed challenging the impugned Show Cause Notice No.131/2022-Gr-4 in F.No.S.Misc 131/2022-Gr-4 dated 28.09.2022 and forbearing the respondent from adjudicating the show cause notice dated 28.09.2022 being barred by limitation in terms of Section 28(9) of the Customs Act, 1962 (in short 'the Act') and proceedings are deemed to be concluded in view of second proviso of Section 28(9) of the Act.

4. The learned counsel for the petitioner submitted that the present show cause notice 28.09.2022 was issued by the respondent and the same is barred by limitation. However, he fairly submitted that the petitioner has filed a reply notice and the matter is at the stage of cross examination and is adjourned from March,2023 till date without any progress. He further submitted that the aspect of limitation was also raised before the authorities concerned, but they have decided to proceed with the



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adjudication, despite having no jurisdiction. The respondent had initiated the proceedings in respect of the impugned show cause notice only in June 2024, after the cross examination was allowed by the Tribunal in May, 2023 and prior thereto, there was no communication by the respondent. There is no reason whatsoever which prevented the proper officer from determining the amount of duty or interest within the period of one year as provided under Section 28(9) of the Act. Hence, the petitioner is constrained to approach this Court to challenge the show cause notice on the aspect of limitation. Therefore, the petitioner cannot be forced to avail the alternate remedy and prayed for allowing the writ petition.

5. Learned Senior Panel Counsel appearing for the respondent would submit that the petitioner has participated in the enquiry and filed his reply. The matter is pending in the cross examination stage and it has been adjourned by the proper officer in terms of Section 28(9) of the Act. He further submitted that the respondent will complete the entire process and will pass orders.

6. This Court heard the learned counsel on either side and also perused the materials placed on record



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7. The preliminary objection of the petitioner is that the impugned order dated 28.09.2022 is non-est in law and time barred in view of Section 28(9) of the Act.

8. Considering the fact that the petitioner has filed his reply and the matter is pending at the stage of cross examination, the respondent is directed to complete the entire process and conclude the proceedings in terms of Section 28(9) of the Act.

9. With the above directions, this Writ Petition is disposed of. No costs. Consequently connected miscellaneous petitions are closed.

08.08.2024

Index: Yes/No

Web: Yes/No

Speaking/Non Speaking

Neutral Citation: Yes/No

msv

To

Commissioner of Customs,
Chennai-II Commissionerate,
Rajaji Salai, Customs House,
Chennai, Tamil Nadu – 600 001.

KRISHNAN RAMASAMY, J.

msv



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