IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.11.2024

Coram:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.26949 of 2022
and W.M.P.No.26159 of 2022

M/s.Nexjet Impex India
No.86, Varadhamuthiyappan Street,
Sowcarpet, Chennai – 600 001.
By its Proprietor Shri Sher Khan

...Petitioner

Versus

1.The Additional Commissioner of Customs (Gr.1-4),
Commissionerate VII, O/o.The Principal
Commissioner of Customs,
(Chennai – VII) New Custom House,
Chennai – 600 027.

2.The Assistant/Deputy Commissioner of Customs (SIIB),
Air Cargo Complex, Customs House,
Meenambakkam, Chennai – 600 027.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari to call for the records pertaining to the impugned *exparte* order in Original No.453/2022 dated 05.07.2022 passed by the 1st respondent herein and to quash the same, to the extent of order passed as against the petitioner at para 23(c) & (d) of the impugned order, as the said *exparte* impugned order has been passed by the 1st respondent without affording an opportunity of personal hearing and also, by not considering the reply dated 25.01.2022 furnished by the petitioner to the show cause notice dated 07.12.2021 which is in clear violation to the principles of natural justice and also, violating the fundamental rights guaranteed to the petitioner in terms of Art.19(1)(g) and 301 of the Constitution of India.

For Petitioner	:	Mr.S.Baskaran
For Respondents	:	Ms.G.Vardini Karthick, Junior Standing Counsel

<u>ORDER</u>

With the consent of both sides, this writ petition is taken up for final disposal.

2. In the present writ petition, the petitioner has challenged the impugned order in Original No.453/2022 dated 05.07.2022 passed by the 1st respondent. By the said impugned order, the 1st respondent had imposed penalty against the petitioner as detailed below:

"23. Accordingly, I pass the following orders:

<u>ORDER</u>

(a) I order to confiscate 557 grams of Gold of 24 Karat purity valued at Rs.25,07,057/-, smuggled by concealing, under Sections 111(d), 111(i), 111(l) and 111(m) of the Customs Act, 1962.

(b) I order to confiscate the declared imported goods viz., "cow finished leather" valued at Rs.14,209/- under Section 118(a) & 119 of the Customs Act, 1962, however, I order to redeem the goods after payment of redemption fine of Rs.14,209 (Rupees Fourteen Thousand Two Hundred and Nine Only) under Section 125 of CA, 1962 along with applicable duty and interest and penalty levied.

(c) I impose penalty of Rs.25,07,057/- (Rupees Twenty Five Lakhs Seven Thousand and Fifty Seven Only) on M/s.Nexjet Impex India, under Section 112(a) of Customs Act, 1962 for rendering the goods liable for confiscation under Section 111(d), 111(i), 111(l) and 111(m) of the Customs Act, 1962.

(d) I impose penalty of Rs.1,00,00,000/- (Rs.One Crore) on M/s.Nexjet Impex India, under Section 114AA of Customs Act, 1962 for rendering the goods liable for confiscation under Section 111(d), 111(i), 111(l) and 111(m) of the Customs Act, 1962.

(e) I impose penalty of Rs.1,00,00,000/- (Rs.One Crore) on M/s.Concorde Zoom, under Section 112(a) and 114AA of the Customs Act, 1962 for abetting smuggling and thereby, rendering the entire goods liable for confiscation and violating the provision of Regulations 10(a), 10(n) and 10(o) of Customs Broker Licensing Regulations, 2018.

(f) I impose penalty of Rs.1,00,00,000/- (Rs.One Crore) on M/s.K.S.Kannan & Co., under Section 112(a) and 114AA of the Customs Act, 1962 for abetting smuggling and thereby rendering the entire goods liable for confiscation and violating the provision of Regulations 10(o) of Customs Broker Licensing Regulations,

2018."

3. The specific case of the petitioner is that the petitioner was issued with a Show Cause Notice bearing Ref.No.DIN: 20211273MU0000222BCE dated 07.12.2021. It is the further case of the petitioner that the petitioner had also replied to the said show cause notice on 25.01.2022.

4. The facts on record indicate that the personal hearing was fixed on 19.04.2022. The petitioner claims to have received the intimation regarding the personal hearing that was fixed on 19.04.2022 & 20.04.2022. The respondents have fixed an alternate date for personal hearing. The impugned order records that the personal hearing was granted on 09.05.2022 & 21.05.2022. The case of the petitioner is that the petitioner has received the intimations, fixing the personal hearing on 09.05.2022 & 21.05.2022.

5. In the counter affidavit, the respondents have stated that the petitioner was issued with the following notices/letters, fixing the personal

hearing on following dates:

Date of Notices/Letters	Personal Hearing Dates
Nil	19.04.2022
30.04.2022	09.05.2022
12.05.2022	30.05.2022

6. Thus, there is a variation between the dates mentioned in Paragraph No.14 of the impugned order and the dates mentioned in Paragraph Nos.13, 14 & 15 of the counter affidavit filed by the respondents.

7. Paragraph No.14 of the impugned order and Paragraph Nos.13, 14 & 15 of the counter affidavit filed by the respondents are reproduced hereinbelow:

Paragraph No.14 of the impugned order:

"*14. Shri.Sher Khan, Proprietor of M/s.Nexjet Impex India vide letter dated 25.01.2022 submitted reply to Show Cause Notice and reiterated the previous submissions made vide letter dated 07.07.2021. Further, in absence of Reply to SCN dated 07.12.2021 issued vide F.No.CUS/SIIB/INT/96/2021-SIIB-O/O PR COMMR-CUS-ACC-CHENNAI, from other Noticee, were granted an opportunity of personal hearing was granted on 19.04.2022. Shri.Sher Khan, Proprietor of M/s.Nexjet Impex vide Letter dated 20.04.2022 informed that they received the PH intimation letter* *only on 19.04.2022 and requested for re-fixing of the PH to some other day so that prior intimation can be given in advance. Accordingly, Personal Hearing were granted on 09.05.2022 and 21.05.2022. All PH intimation letters were returned with comment "left"."*

Paragraph Nos.13, 14 & 15 of the counter affidavit:

13. I state that an opportunity of Personal Hearing was granted to petitioner on 19.04.2022 and the PH intimation letter was sent to the address: No.86, Varadhamuthiyappan Street, Sowcarpet, Chennai – 600 001 and vide letter dated 20.04.2022 informed that they received the PH intimation letter only on 19.04.2022 and requested for fixing the PH on an alternate day.

14. I state that the respondents issued a letter granting personal hearing on 09.05.2022 and intimation letter dated 30.04.2022 was sent to the petitioner. I state that the said letter dated 30.04.2022 was returned undelivered.

15. I further state that another personal hearing was granted on 30.05.2022 and intimation letter dated 12.05.2022 was sent to the petitioner and the same was returned undelivered. I state that after requesting for adjournment, none of the personal hearing letters were received by the petitioner and hence, the question of principles of natural justice will not apply to the present case."

8. Thus, it is evident that the petitioner was not heard before the impugned order was passed. The impugned order appears to have been passed in violation of the principles of natural justice and hence, it is liable to be quashed.

9. Accordingly, the impugned order in Original No.453/2022 dated 05.07.2022 passed by the 1st respondent is quashed and the case is remitted back to the 1st respondent, for passing fresh orders. **The petitioner shall positively appear before the 1st respondent, for personal hearing on 09.12.2024 and make his submissions.** Thereafter, the 1st respondent shall pass orders afresh, within a period of three months from the date of receipt of a copy of this order.

10. With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

29.11.2024

mrr
Index : Yes/No
Speaking Order (or) Non-Speaking Order

To

1.The Additional Commissioner of Customs (Gr.1-4),
Commissionerate VII, O/o.The Principal
Commissioner of Customs,
(Chennai – VII) New Custom House,
Chennai – 600 027.

2.The Assistant/Deputy Commissioner of Customs (SIIB),
Air Cargo Complex, Customs House,
Meenambakkam, Chennai – 600 027.

C.SARAVANAN, J.

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