

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

110

2024:PHHC:013595-DB

CWP-2238-2024

Date of Decision: 01.02.2024

M/s. Lekh Raj Narinder Kumar through its Partner

.....Petitioner(s)

Versus

Department of Custom through its Assistant Commissioner, Haryana and another

...Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE LAPITA BANERJI**

Present: Mr. Gourav Verma, Advocate,
for the petitioner.

Mr. Rishabh Kapoor, Sr. Standing Counsel,
for the respondents.

G.S.SANDHAWALIA, J. (Oral)

1. Challenge in the present writ petition filed under Articles 226 and 227 of the Constitution of India is to the order dated 05.09.2023 (Annexure P-4) whereby, an amount of Rs.21,59,223.35/- has been demanded alongwith applicable interest and penalty within 15 days from the date of receipt of the letter. The demand is based on the Notification No.49 dated 25.08.2023 (Annexure P-2) and Notification No.50, also dated 25.08.2023. By virtue of the said notifications, 20% export duty was imposed.

2. The case of the petitioner (which has been filed through the partner) is that he had filed the export shipment vide shipping bill dated 21.08.2023 for export of India Long Grain Parboiled Sela Rice. The case of the petitioner herein is that six containers stuffed with rice had already reached ICT Jattipur, Samalkha, Tehsil Panipat, District Haryana on 23.08.2023 (Annexure P-7) and they came under the control of the Customs

Officials and the petitioner had lost control over the containers. The processing was duly done and the original bond was submitted on 23.08.2023 and there was some alteration and the re-submission was done on 25.08.2023. Apparently, the goods have been shipped out on 26.08.2023 as per the Let Export Order (LEO) which also finds mention in the impugned order dated 05.09.2023. It is, thus, the case of the petitioner that he is not liable to pay the demand which has been created and the issue of retrospectivity has also been raised, as such.

3. Apparently, after the impugned demand was raised by the respondents, the petitioner had objected to the same vide reply dated 15.09.2023 (Annexure P-9) and the respondents as such had called him for consultation and discussion on 25.09.2023 vide letter dated 20.09.2023 (Annexure P-10) for post decisional hearing. It is in such circumstances, the petitioner has now challenged the said order.

4. We are of the considered opinion that before the demand had been raised, the petitioner should have been at least put to notice and the recovery which is being sought to be effected talks about penalty and applicable interest without quantifying the said amounts over and above the custom duty of Rs.21,59,223.35/-. It is, thus, apparent that the petitioner had never been given any opportunity as such before the amount was levied upon it, which would violate the principles of natural justice.

5. Accordingly, on the sole ground without calling for the reply and keeping in view the admitted fact that even the respondents themselves have called upon the petitioner to come and discuss the issue later at point of time, we are of the considered opinion that the demand as such raised vide letter

It is however, open to the respondents to issue a show cause notice to the petitioner and act in accordance with law so that the petitioner is at liberty to reply to the same and raise all the legal contentions which are now being sought to be raised. It is open to the respondents thereafter to pass an order keeping in view the objections raised by the petitioner.

6. Writ petition stands allowed in the abovesaid terms.

(G.S. SANDHAWALIA)
JUDGE

01.02.2024
shivani

(LAPITA BANERJI)
JUDGE

Whether reasoned/speaking	Yes
Whether reportable	No