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ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/795/2025

THE ANANDA BAG TEA COMPANY LIMITED
VS
UNION OF INDIA AND ORS

BEFORE:
The Hon'ble JUSTICE OM NARAYAN RAI
Date :December 10, 2025.

Appearance:
Ms. Micky Chowdhary, Adv.
Mr. B.N. Pal, Adv.
...For the Petitioner

Mr. Kaushik Dey, Adv.
Mr. Anurag Roy, Adv.
...For the Respondents Customs Authorities

Mr. Smarajit Roy Chowdhury, Adv.
Mr. Amit Sharma, Adv.
...For Union of India

The Court: The petitioner assails a notice of show cause dated 20th August, 2025 issued by the Additional Commissioner, Appraising Group – 1 (Port), Custom House, Kolkata, whereby the petitioner has been called upon to explain as to why an action as indicated in the said notice including imposition of penalty would not be taken against the petitioner for the petitioner not fulfilling its export obligation.

The relevant facts of the case, as would be evident from the writ petition, are that petitioner is a manufacturer exporter. On August 25, 2020, the petitioner had applied to the respondent authorities for issuance of Export Obligation Discharge Certificate (EODC) against fulfilment of Export Obligation. The respondents sought for some further details by a letter dated

September 16, 2020 which were supplied by the petitioner under the cover of a letter dated October 22, 2020. On November 23, 2020 the petitioner wrote a letter to the respondents thereby intimating the addressee respondent (Dy./ Asst. Commissioner of Customs) that the petitioner's clearing agent had at the time of filling up of the details required to be given in shipping bills, missed to enter the authorization number along with imported quantity used in respect of two shipping bills. By the said letter, the petitioner requested the addressee authority to take necessary action so that EODC could be issued in favour of the petitioner. However, nothing was done and the petitioner's request for post exportation amendment remained pending. The petitioner followed up the matter but to no avail. Ultimately on March 21, 2024 a letter was issued to the petitioner by the Superintendent of the Customs whereby the petitioner was informed that out of the two shipping bills in respect whereof amendment had been requested one had been put up for approval before the competent authority. The petitioner immediately responded to the same and requested the authority concerned to put up before the competent authority the second shipping bill also for approval. The respondents did not communicate anything thereafter on the said subject. While the petitioner's request for post exportation amendment thus remained pending, a notice to show cause, dated August 20, 2025 was issued to the petitioner. Hence, the writ petition.

Ms. Micky Chowdhury, Learned Advocate appearing for the petitioner submits that the impugned notice to show cause is actually the result of failure on the part of the respondents not take a decision on the petitioner's application for Post Exportation Amendment made to the respondents on

23rd November, 2020. It is submitted that whenalmostthree years passed without the respondents taking any decision on the petitioner's representation/application dated 23rd November, 2020, the petitioner followed up by another letter dated 21st November, 2023 which was then the responded to by a letter dated 21st March, 2024 thereby intimating the petitioner thus:

> *"in one of the Shipping bill bearing no.* ***8613724 dt 29.11.2019,*** *HSN code of the item is shown as* ***09024090*** *whereas Advance Authorization license bearing no 210209079 covers that item under ITCHS code 09024020."*
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> *In view of the above, it is informed that the mentioned Shipping bill bearing no.* ***8613724 dt 29.11.2019*** *cannot be considered to be covered under Advance Authorization license bearing no 210209079 dated 29.03.2019. However, the other Shipping Bill bearing no* ***9326743 dt 30.12.2019*** *is being put up to the higher authority for perusal and approval as requested by you."*

It is submitted that upon receipt of the said letter, the petitioner issued another letter dated 2nd April, 2024 offering the requisite clarification and explanation to the respondent and requesting the respondent to put up both the shipping bills instead of one for approval of amendment inasmuch as amendment of both the bills had been sought for by the petitioner by its application dated November 23, 2020.

It is submitted that the show - cause notice could not have been issued by the respondents while keeping the petitioner's request for amendment pending.

Ms. Chowdhary, further submits that since the petitioner had the intention of discharging its export obligation and had taken due steps, as would be appearing from the initial applications seeking discharge of the petitioner to export obligation and the follow up representations, the petitioner could not have been issued the show cause notice. In support of her contention that a *bonafide* exporter should not be harassed and penalised for an inadvertent mistake she relied upon on a judgment of Hon'ble Supreme Court in the case of***Commissioner of Customs Vs. N.C. John & Sons Pvt. Ltd.*** reported at***2022 (380) E.L.T. 241 (S.C.).***

She further relied on the notification dated 31st March, 2022 issued by the Central Board of Indirect Taxes and Customs to demonstrate that the authority who has issued the notice to show cause is not competent to decide the petitioner application seeking for post exportation amendment.

It is further submitted that in terms of the "Shipping Bill (Post Export Conversion in relation to Instrument Based Scheme) Regulations, 2022" it was obligatory on the part of the respondent customs authority to take a decision on the petitioner's the application seeking discharge obligation within a period of 30 days from the date of which it was filed.

Relying on the judgment Hon'ble Supreme Court judgment in the case of ***Shah NanjiNagsi Exports Pvt. Ltd. Vs. Union of India and Others***. Reported in ***(2025) 151 GSTR 779 (SC),*** it is submitted that a genuine exporter should not be driven to needless litigation on account of inadvertent procedural lapses which are rectified in accordance with law.

Mr. Kaushik Dey, Learned Advocate for the respondents Customs Authorities submitted that the petitioner could have easily obviated the situation by answering to the pre-show cause consultation notice issued to the petitioner on April 28, 2025 (Annexure-P/21, Page no. 175 of the writ petition). It is further submitted that the petitioner can in any event approach the show cause issuing authority and place whatever the petitioner has to place in response to the show cause. Relying on a judgment of the Hon'ble Supreme Court in the case of ***Special Director and Another Vs. Mohd. Ghulam Ghouse And Another*** reported in ***2004 Supreme Court Cases (Cri) 826,*** Mr. Dey submits that a writ Court should not interfere witha show cause notice under Article 226 of the Constitution of India.

In reply to Mr. Dey's submission, it is submitted by Ms. Chaowdhary that the pre-show cause consultation notice which was served upon the petitioner was/is*non est* inasmuch as the Pre Notice Notice Consultation Regulations, 2018 provide for issuance of such notice only in cases where a notice to show cause under Section 28 of the Customs Act is contemplated. It is asserted that the present notice being under Section 124 of the Customs Act, the principal notice consultation could not have been issued.

Heard the Learned Advocates appearing for the respective parties and considered the material on record.

It does not appear to be in dispute that the petitioner had as far back as on 25th August, 2020 written to the Additional DGFT requesting for issuance of discharge certificate against fulfilment of export obligation against advance authorisation and that by a letter dated November 23, 2020 the petitioner has requested for post exportation amendment of two shipping bills and for has repeated its request for issuance of EODC.

Since no step was taken in furtherance of the request made by the petitioner for three years, the petitioner wrote another letter dated November

21, 2023 that (Annexure-P/16, Page-110) repeating its request. It was only thereafter that by a letter dated March 21, 2024 the petitioner was informed that one of the shipping bills was being put up by the authorities for consideration citing certain issues with the other shipping bill. The petitioner responded to the said letter too by providing the requisite clarification as regards the allegedly problem clad shipping bill and requestedthe respondent for putting up both the bills before the Competent Authority for approval.

There has been no communication from the respondent since then on the subject since then but in the meantime a notice to show cause has been issued to the petitioner on August 20, 2025 basing the same primarily on the petitioner's failure to discharge its export obligation. The petitioner's contention that if the petitioner's application for amendment made to the authorities on November 23, 2020 had been appropriately considered and appropriate order had been passed thereby issuing EODC, the basis to issue show cause notice would not have existed cannot be lightly brushed aside.

It is settled that a notice to show cause does not give rise to cause of action and as such, a writ Court should be loath to interfere at the stage of issuance of notice to show cause unless the same has been issued by an authority wholly without jurisdiction or the said notice is tainted with mala fides.

In the present case it is palpable that the show cause notice may not have seen the light of the day if the petitioner's application dated 23rd November, 2020 had been favourably considered. It has been observed that the Shipping Bill (Post Export Conversion in relation to Instrument Based

Scheme) Regulations, 2022 requires the relevant authorities to consider and dispose of the such application within a period of 30 days.

Even otherwise i.e. even without taking into considering the provisions of the Shipping Bill (Post Export Conversion in relation to Instrument Based Scheme) Regulations, 2022 the application filed by the petitioner for post exportation amendment could not have been kept pending for a period as long as five yearsthereby rendering the petitioner vulnerable to penal proceedings.

In view of the delay in taking decision on the said application of the petitioner, this Court finds good grounds to interfere at this stage in order to balance equities without interfering with the show cause notice impugned herein.

Accordingly, this Court directs the respondent/Customs Authority to consider the disposed of the petitioner's application dated November 23, 2020 within a period of two weeks from date of communication of this order upon affording an opportunity of hearing of the petitioner. Needless to mention that the decision taken by such authority on such application shall be a reasoned one and shall be communicated to the petitioner within a week after taking of such decision.

The petitioner shall be entitled to file a reply to the notice to show cause within two weeks from the date of communication of the order or the decision taken by the authority on the petitioner's representation/application dated 23rd November, 2020.

The appropriate authority who is to decide the proceeding initiated by the impugned show cause notice shall thereafter proceed to take appropriate decision in accordance with law upon considering the application made by the petitioner in terms of this order.

It is clarified that this Court has not gone into any merits of the matter and the authority competent to adjudicate and take final decision on the proceeding initiated on the basis of the impugned show cause notice shall be free to take decision in accordance with law and this order shall not be treated as a mandate to pass any order in favour of the petitioner or against the petitioner.The petitioner shall communicate this order along with application dated 23rd November, 2020 and all the subsequent communications exchanged between the petitioner and the respondent via e-mail to the authority concerned.

WPO/795/2025 stands disposed of with the aforesaid directions.

(OM NARAYAN RAI, J.)

DB/S. Mandi