

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 12872 OF 2025

V K Vijayasarathy	...Petitioner
Versus	
The Union Of India	...Respondent

**Mr. Mohamed Uvaiswuueh Muhsin (through V.C), a/w Vikas
Poojary i/by PDS Legal, for Petitioner.**

Mr. Ram Ochani i/by Sangeeta Yadav, for Respondent.

**CORAM : M.S. Sonak &
Advait M. Sethna, JJ.**

DATED : 01 December 2025

ORAL ORDER.:- *(Per M. S. Sonak, J)*

1. Heard Mr. Muhsin, who appears with Mr. Poojary, learned counsel for the petitioner and Mr. Ochani, learned counsel for the respondent.

2. Rule. The Rule is made returnable immediately at the request of and with the consent of the learned counsel for the parties.

3. This petition challenges the order in original dated 27 March 2025 on the ground of violation of natural justice.

4. Ordinarily, we do not entertain such petition because an appeal is provided against the impugned order under Section 128 of the Customs Act. However, learned counsel for

the petitioner pointed out that in this case, the petitioner, had filed a reply dated 11 March 2023 to the show cause notice. However, the impugned order states that no reply was filed by the petitioner. He submits that this means that the petitioner's reply, which was duly filed, has not even been considered.

5. Based on the above submissions made on behalf of the petitioner, we made an order dated 13 October 2025, which reads as follows:-

“PC.:-

1. Heard Mr. Radhakrishnan who appears with Mr. Bhavé for the Petitioner and Mr. Ochani for the Respondents.

2. The Petitioner has made averments that a detailed reply was filed to the show cause notice on 11 March 2023 by e-mail and speed post. However, the impugned order has been made by recording that no reply has been filed by the Petitioner. Mr. Radhakrishnan submits that an opportunity of personal hearing was also not given to the Petitioner.

3. Accordingly, we direct the concerned Respondent to file an affidavit primarily to deal with these allegations relating to failure of natural justice. Such affidavit must be filed and served by 14 November 2025.

4. The learned counsel for the Petitioner states that details of the Notary Public before whom this petition was sworn will also be disclosed by filing an additional affidavit on the next date. A copy of the Gazette Notification appointing Mr. R. Chidambaram as a Notary Public should also be placed on record by the next date.

5. List the matter on 17 November 2025.”

6. Today, Mr. Ochani points out that the affidavit filed by the petitioner in pursuance of the direction in paragraph 4 of our order dated 13 October 2025 is contradictory and inspires no confidence. We have perused the affidavit. The petitioner has given the name with registration number of the notary before whom this petition was sworn. However, all details have not been furnished on the ground that the notary was reluctant to provide the same. Still, some documents from the State Government have been provided.

7. Therefore, in the peculiar facts of this case, without probing deeper into the issue of notary public's credentials, we go to the main issue urged by learned counsel for the petitioner, i.e. violation of natural justice on account of non-consideration of the reply filed by the petitioner.

8. The record bears out that the petitioner indeed filed the reply to the show cause notice. The respondents have not filed any affidavit to dispute this position. Mr Ochani submitted that he has not yet received any instructions on this aspect. We had granted the respondents until 14 November 2025 to file an affidavit stating whether the petitioner's reply to the show cause notice was received. The averments in the petition remain unchallenged.

9. The petitioner has placed on record proof of service in the form of email records and postal records. Therefore, we can proceed on the basis that the petitioner had filed a reply

to the show cause notice. The impugned order, however, proceeds on the basis that the petitioner filed no reply. This means that the petitioner's reply has been completely ignored. This would amount to a violation of the principles of natural justice and fair play. This is one of the well-known exceptions to the rule requiring the parties to exhaust the alternative remedies provided by the statute.

10. On the above ground of failure of natural justice arising out of non-consideration of the petitioner's reply to the show cause notice, we quash and set aside the impugned order in original dated 27 March 2025 and remand the matter to the adjudicating authority to decide and dispose of the show cause notice afresh.

11. This time, however, the adjudicating authority shall not only consider the petitioner's reply, which is at Exhibit C to this petition, but also grant the petitioner/his representative an opportunity for a personal hearing. The adjudicating authority must pass a reasoned order, and the same must be communicated to the petitioner.

12. We clarify that the impugned order dated 27 March 2025 is set aside only to the extent of the petitioner herein styled as Noticee Nos. 3 and 4 in the show cause notice dated 23 January 2023 and in the order in original dated 27 March 2025. The impugned order dated 27 March 2025, insofar as it concerns the other notices, remains undisturbed.

13. The Rule is made absolute in the above terms. No

costs

14. All concerned to act on an authenticated copy of this order.

(Advait M. Sethna, J)

(M.S. Sonak, J.)