



W.P. No.6189 of 2025

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2025

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P. No.6189 of 2025

and

W.M.P. Nos.6799, 6800 and 6802 of 2025

M/s. New Sun Innovaation

Represented by its Partner:

P Balasubramaniam

... Petitioner

-Vs-

1. The Assistant Commissioner of Customs (Drawback - AIR)

Office of the Principal Commissioner of Customs,

(Chennai - VII) - New Custom House,

Meenambakkam,

Chennai - 600027.

2. The Assistant Commissioner of Customs

(Revenue Recovery Unit, Chennai - VII)

Office of the Principal Commissioner of Customs, (AIR CARGO)

New Custom House, Chennai - VII - Commissionerate,

AIR Cargo Complex Meenambakkam,

Chennai – 600027

... Respondents

Prayer : Writ Petition filed Article 226 of the Constitution of India, for Writ of Certiorari, to call for the records of the Order in Original



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No.2114/2023-AIR, dated 16.12.2023 passed by the 1st respondent and quash the same as illegal and void ab initio.

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For Petitioner : Mr. Varun Ranganathan T N

For Respondents : Mr. G. Meganathan
Sr. Standing Counsel

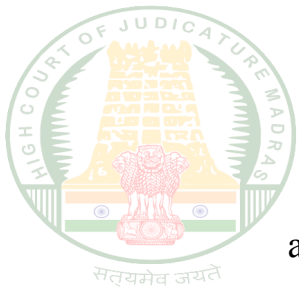
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This writ petition has been filed challenging the impugned order-in-original, dated 16.12.2023.

2. Under the impugned order-in-original, the 1st respondent has confirmed the demand for recovery of availed duty drawback from the petitioner, amounting to Rs.74,57,154/- as against 211 shipping bills as detailed in the table as per Section 75(1) of the Customs Act, 1962 read with Rule 16A of the Customs and Central Excise Duties Drawback Rules, 1995 along with applicable interest under Section 75A(2) of the Customs Act, 1962.

3. The petitioner has challenged the impugned order-in-original on the following grounds :

a) the impugned order-in-original has been passed



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arbitrarily and in violation of principles of natural justice. The order-in-original is based on the show cause notice, dated 10.05.2018, which calls for documents dating back to the period from 2004 to 2014. According to the petitioner, those documents were submitted by the petitioner with the respondents during the relevant period. Therefore, according to the petitioner, the show cause notice, dated 10.05.2018 issued after a lapse of more than a decade from the date when the exports were made is barred by limitation.

b) The personal hearing notices said to have been issued to the petitioner as reflected in the impugned order-in-original were not received by the petitioner as they were sent to the old address of the petitioner.

4. The learned counsel for the petitioner drew the attention of this Court to an order, dated 07.03.2025 passed by this Court in W.P. No.18552 of 2022 in *M/s.L & T Construction Equipment Ltd., vs. The Assistant Commissioner of Customs (Chennai-IV)*. According to the learned counsel for the petitioner as per the said decision, if the show cause notice has been sent by the respondents beyond the period of three



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years from the date of respective shipments made by the petitioner, the duty drawback claim is barred by limitation. Therefore, he would submit that in the instant case, the show cause notice was issued by the respondents only on 10.05.2018 pertaining to shipments for the period from 2004 to 2014 and therefore, he would submit that since the show cause notice has been issued beyond the period of three years, the impugned order-in-original has to be quashed.

5. The learned counsel for the petitioner would also submit that the petitioner has not received any personal hearing notice from the respondents. According to him, the respondents have sent the personal hearing notices to the old address of the petitioner. According to him, in violation of principles of natural justice, the impugned order-in-original has been passed against the petitioner.

6. A counter affidavit has been filed by the respondents denying the contentions of the petitioner. According to them, only on account of the non-fulfillment of the export obligations by the petitioner by not producing the Bank Realization Certificates(BRCs), the impugned order-in-original came to be passed against the petitioner. According to the



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respondents only by adhering to the principles of natural justice by affording personal hearing to the petitioner as reflected in the impugned order-in-original, the impugned order-in-original came to be passed. According to the respondents, the petitioner also appeared before the respondents for one personal hearing on 10.05.2018, based on the notice sent by the respondents. It is also stated by the respondents that during the personal hearing, the petitioner undertook to produce the relevant documents within a period of two months. But according to the respondents despite the said undertaking, the petitioner chose not to submit the relevant documents.

7. The learned Senior Standing Counsel appearing for the respondents also reiterated the contents of the counter affidavit filed by the respondents before this Court. He would submit that several public notices were issued calling upon the exporters to produce the Bank Realisation Certificates(BRCs) and therefore, the petitioner now cannot contend that they were not aware about the requirement of production of BRCs for the relevant period. He would also submit that apart from issuing public notices, the said requirement was also pasted in the notice board of the Customs Department. Being a regular Exporter, the

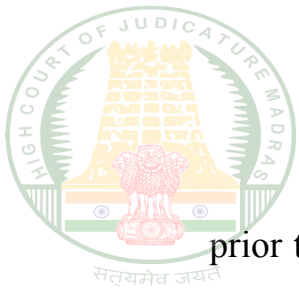


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petitioner was put on notice about the requirement to produce BRCs for the relevant period, but despite the same, the petitioner did not produce the same before the respondents.

8. The learned Senior Standing Counsel appearing for the respondents would also submit that only after adhering to the principles of natural justice, the impugned order-in-original came to be passed. He would further submit that despite offering personal hearing to the petitioner, the petitioner did not chose to come forward to attend the personal hearing.

9. Admittedly, the duty drawback claim pertains to 211 shipping bills for the period from 2004 to 2014. Admittedly, the first show cause notice was issued by the respondents pertaining to the duty drawback claim for the period from 2004 to 2014 was issued only on 10.05.2018, i.e. after a lapse of several years. Admittedly, the show cause notice was issued by the respondents beyond the period of three years from the date of the respective shipping bills. The petitioner did not also participate in the impugned proceedings. The petitioner categorically contends that they never received any personal hearing notices from the respondents



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prior to the passing of the impugned order-in-original. No evidence has been placed on record before this Court by the respondents to prove that the petitioner had in fact received the personal hearing notices sent by the respondents. The respondents have contended that the personal hearing notices sent to the petitioner were returned “undelivered”. The petitioner contends that the personal hearing notices were sent by the respondents to the petitioner's old address. The DGFT certificate, dated 24.08.2004 has also been produced by the learned counsel for the petitioner to substantiate the petitioner's case that the petitioner's new address is No.4/19-5, A & B, Balu Metal Compound Pitchampalayam Pudur, P.N. Road, Tiruppur, Tamil Nadu – 641 603, but as seen from the impugned order-in-original, the communications sent to the petitioner were sent to a different address.

10. In the decision relied upon by the learned counsel for the petitioner in *M/s.L & T Construction Equipment Ltd.'s* case, this Court has agreed with a view taken by the Gujarat High Court pertaining to a duty drawback claim and has held that three years period is the maximum period, which can be considered as a reasonable one for recovery of any amount erroneously paid. In fact as seen from the said



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decision, this Court had also taken into consideration, the judgment of the Hon'ble Supreme Court in the case of ***Government of India vs. Cital Fine Pharmaceuticals reported in 1989 (42) ELT 515 (SC)***, wherein the Hon'ble Supreme Court has held that any demand by any statutory authority will have to be made within a reasonable period. This Court therefore, held in ***M/s.L & T Construction Equipment Ltd., case*** that if the claim is made beyond the period of three years, the claim is unsustainable. However, in the counter filed by the respondents, the respondents have stated that several public notices were issued by the respondents and the petitioner was duly informed about the need for submission of Bank Realisation Certificates for the relevant period, public notices even if given will not suffice the purpose of recovering the availed duty drawback from the petitioner as recovery will have to be made only by following the due procedure established under law. Therefore, this Court is of the considered view that the impugned order-in-original has to be quashed and reconsidered by the respondents after affording a personal hearing to the petitioner and by adhering to the principles of natural justice for the following reasons :-

- a) The petitioner has not received the personal hearing notices said to have been sent by the respondents prior to the



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passing of the impugned order-in-original.

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b) The petitioner was not granted an opportunity to submit his explanation as to why they are not liable to refund the availed duty drawback claim.

c) The petitioner categorically contends that the duty drawback claim is barred by limitation in view of the inordinate delay in sending the show cause notice pertaining to the exports made by the petitioner for the year from 2004 to 2014.

11. Accordingly, the impugned order-in-original, dated 16.12.2023 passed by the 1st respondent is hereby quashed and the writ petition is allowed by remanding the matter back to the 1st respondent for fresh consideration on merits and in accordance with law. The respondents shall pass final orders after affording personal hearing to the petitioner and also permitting the petitioner to submit their explanation reiterating the contentions raised by the petitioner before this Court in this writ petition, which includes the plea of limitation. The respondents shall pass final orders within a period of twelve weeks from the date of receipt of a copy of this order. While sending any personal hearing notice to the petitioner, the respondents shall send the same to the present address of



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the petitioner, which is stated in the affidavit filed in support of this petition.

25.07.2025

Internet: Yes/No
Index: Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes/No
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To

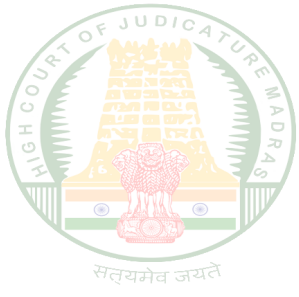
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ABDUL QUDDHOSE, J.

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