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W.P. No.6698 of 2024 and W.M.P. Nos.7448 & 7451 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2025

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P. No.6698 of 2024 and W.M.P. Nos.7448 & 7451 of 2024

Mukesh Kumar Jain

.. Petitioner

VS

1.The Assistant Commissioner of Customs,
DBK-BRC(CH-IV),
Office of the Commissioner of Customs Chennai-IV,
Chennai Customs House,
No.60, Rajaji Salai,
Chennai 600 001.

2.The Assistant Commissioner of Customs,
ARC(CH-IV),
Office of the Commissioner of Customs Chennai-IV,
Chennai Customs House,
No.60, Rajaji Salai,
Chennai 600 001.

.. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari and call for the records pertaining to the impugned order in original No.82658/2021-DBK-BRC dated 31.03.2021 in F.No.S.Misc.2/6175/2016 BRC (DBK) passed by the first respondent and quash the same.

For Petitioner : Mr.Sethu Prabakaran R.

For Respondents : Mr.B.Arvind Srevatsa



ORDER

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This writ petition has been filed, challenging the impugned order in original passed by the first respondent dated 31.03.2021. Under the impugned order in original, the first respondent has confirmed the demand for recovery of availed draw back amounting to Rs.1,00,752/- against the subject shipping bills and imposed a penalty of Rs.10,000/- on the petitioner under Section 117 of the Customs Act, 1962.

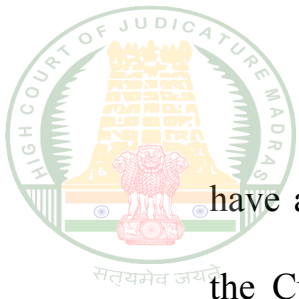
2.The petitioner has challenged the impugned order in original on the ground of violation of principles of natural justice. In this writ petition, the petitioner has categorically contended that he never received the show cause notice or the impugned order in original and he came to know about the impugned order in original only after receiving the recovery notice sent by the respondents.

3.Learned counsel for the petitioner would submit that as early as on 06.09.2016 itself, the petitioner had intimated the respondents about the change of address to No.33, Appasamy Street, Chennai-79. The Importer-Exporter Code Certificate dated 06.09.2016 has also been filed as a



supporting document to establish that the petitioner's new address is No.33, Appasamy Street, Chennai-79. Learned counsel for the petitioner would submit that though the respondents are aware of the petitioner's new address, it came to the knowledge of the petitioner that the respondents were sending communications only to the old address of the petitioner, namely No.15, Nattu Pilliar Koil Street, Sowcarpet, Chennai-79. Learned counsel for the petitioner would submit that the impugned order in original also discloses only the old address. Therefore, the learned counsel for the petitioner would submit that neither the show cause notice nor the impugned order in original was served on the petitioner, which amounts to violation of principles of natural justice.

4.Counter has been filed by the respondents reiterating the contents of the impugned order in original. They would submit that personal hearing was also afforded to the petitioner, but the petitioner did not attend the personal hearing. As seen from the counter, the respondents claim that sufficient opportunities were granted to the petitioner, but the petitioner has failed to make use of those opportunities and therefore, interference by this Court under Article 226 of the Constitution of India does not arise. They



have also stated that instead of filing a statutory appeal as provided under the Customs Act, the petitioner has filed this writ petition, which is not maintainable.

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5. Admittedly, no proof has been produced by the respondents before this Court to prove that the petitioner had received the show cause notice and the impugned order in original. They have also not produced any documentary evidence to prove that the petitioner had received the personal hearing notices sent by the respondents. On the other hand, the petitioner produced before this Court the Importer-Exporter Code Certificate, which confirms that even as on 06.09.2016, the petitioner's place of business was only at No.33, Appasamy Street, Chennai-79. As seen from the impugned order in original, the address of the petitioner is disclosed as No.15, Nattu Pilliar Koil Street, Sowcarpet, Chennai-79.

6. The petitioner has also categorically contended that the said address is his old address. He has also categorically contended that the respondents are aware of the new address of the petitioner as seen from the Importer-Exporter Code Certificate dated 06.09.2016. When the respondents have not



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produced any documentary evidence to prove that the petitioner had received the show cause notice, personal hearing notices and the impugned order in original and when the petitioner has produced documents before this Court to prove that he did not receive either the show cause notice, personal hearing notices or the impugned order in original, the impugned order in original passed by the first respondent is in violation of the principles of natural justice as no opportunity of hearing was granted to the petitioner prior to the passing of the impugned order in original. The petitioner has also categorically contended that he became aware of the impugned order in original only after receiving the recovery notice dated 18.12.2023 from the respondents. The petitioner has filed this writ petition immediately on receipt of the said recovery notice in the month of February 2024. Therefore, on the ground of violation of principles of natural justice, the impugned order in original passed by the first respondent has to be quashed and the matter has to be remanded back to the first respondent for fresh consideration, on merits and in accordance with law by following the due procedure established under law and by adhering to the principles of natural justice.



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7.In the result, the impugned order in original dated 31.03.2021 passed by the first respondent is hereby quashed and the matter is remanded back to the first respondent for fresh consideration, on merits and in accordance with law. The first respondent shall pass final orders, after adhering to the principles of natural justice within a period of eight weeks from the date of receipt of a copy of this order. With the above direction, this writ petition is disposed of. No costs.

20.06.2025

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To

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