IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2025

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P. Nos.12125, 12129 & 12132 of 2024 and
W.M.P. Nos.13221, 13226, 13228 of 2024

G.Indraprasath .. Petitioner in W.P. No.12125 of 2024

Rajkiran Kannan .. Petitioner in W.P. No.12129 of 2024

Eburamusa Sherif .. Petitioner in W.P. No.12132 of 2024

vs.

1.The Principal Commissioner of Customs,
Chennai I Commissionerate,
Anna International Airport,
New Custom House,
Meenambakkam,
Chennai - 600 027.

2.The Joint Commissioner of Customs,
Chennai I Commissionerate,
Anna International Airport,
New Custom House,
Meenambakkam,
Chennai - 600 027. .. Respondents

Prayer in W.P. No.12125 of 2024: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus forbearing the second respondent from conducting adjudication in Show Cause Notice emanating from F.No.DRI/CZU/VIII/48/ENQ-01/INT-52/2022 dated

24.11.2023 without acceding to the request made for cross examination of the persons and officers of Directorate of Revenue Intelligence specifically named in para 23 of the interim reply dated 26.12.2023.

Prayer in W.P. No.12129 of 2024: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus forbearing the second respondent from conducting adjudication in Show Cause Notice emanating from F.No.DRI/CZU/VIII/48/ENQ-01/INT-52/2022 dated 24.11.2023 without acceding to the request made for cross examination of the persons and officers of Directorate of Revenue Intelligence specifically named in para 22 of the interim reply to Show Cause Notice dated 24.12.2023.

Prayer in W.P. No.12132 of 2024: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus forbearing the second respondent from conducting adjudication in Show Cause Notice emanating from F.No.DRI/CZU/VIII/48/ENQ-01/INT-52/2022 dated 24.11.2023 without acceding to the request made for cross examination of the persons and officers of Directorate of Revenue Intelligence specifically named in para 18 of the interim reply dated 23.12.2023.

For Petitioners : Mr.B.Satish Sundar

For Respondents : Mr.M.Santhanaraman,
Senior Standing Counsel

COMMON ORDER

These writ petitions have been filed to forbear the second respondent from conducting adjudication pursuant to the Show Cause

Notices all dated 24.11.2023 without acceding to the request made by the petitioners for cross examination of the persons and officers of the Directorate of Revenue Intelligence specifically named in para Nos.23, 22 and 18 of the interim replies dated 26.12.2023, 24.12.2023 and 23.12.2023 respectively.

2.The petitioners have been issued with the Show Cause Notices by the second respondent all dated 24.11.2023. Admittedly, final adjudication order has not been passed pursuant to the said Show Cause Notices. A request for cross examination of the persons and officers of the Directorate of Revenue Intelligence specifically named in the interim replies dated 26.12.2023, 24.12.2023 and 23.12.2023 respectively has been made by the respective petitioners. According to the petitioners, despite the specific request having been made for cross examination of the aforesaid persons, the same has not been considered till date. According to the petitioners, if the request for cross examination is not considered, the petitioners will be prejudiced as they will not be able to disprove the contentions of the respondents as claimed in the Show Cause Notices dated 24.11.2023. According to the petitioners, the right of cross examination is mandatory. Therefore, they should be granted permission to cross examine the persons and officers of Directorate of Revenue Intelligence specifically named by their interim replies.

3.These writ petitions were filed in the year 2024 and the petitioners are having the benefit of interim stay of further proceedings before the respondents pursuant to the issuance of Show Cause Notices all dated 24.11.2023 by this Court's order dated 05.06.2024. In view of the interim stay granted by this Court, admittedly, no further proceedings has taken place in the impugned proceedings arising out of the Show Cause Notices all dated 24.11.2023 before the respondents. Learned counsel for the petitioners drew the attention of this Court to the following authorities:

1)State of Kerala vs. V.K.T.Shaduli Grocery Dealer reported in 1977 (2) SCC 777;

2.Veetrag Enterprises vs.Commissioner of Cus. (Seaport Exports), Chennai reported in 2015 (330) E.L.T. 74 (Mad.);

3.Vulcan Industrial Engineering Co. Ltd. vs. Union of India reported in 2013 (297) E.L.T. 190 (Guj.).

4.Relying upon the aforesaid decisions, he would submit that right to cross examination of the witnesses is mandatory and if the said right is being refused, it will amount to violation of principles of natural justice.

5.On the other hand, the learned Standing Counsel appearing for the respondents would submit that under the Customs Act, right to cross examination of witnesses is not mandatory. He would rely upon the following authorities in support of the said contentions:

a)A decision rendered by the Hon'ble Supreme Court in the case of Kanungo & Company vs. Collector of Customs and others reported in AIR 1972 SC 2136;

b)A Division Bench judgment of the Madras High Court in the case of S.Rajendran vs. Joint Commissioner of Customs (Preventive) and others reported in 2019 SCC Online Madras 30508;

c)A Division Bench judgment of the Madras High Court dated 17.08.2021 in W.A. No.1763 of 2021 in the case of the Commissioner of Customs (Appeals-II) and another vs. Shri Vijayraj Surana.

6.Admittedly, the request of the petitioner for cross examination of the witnesses through their interim replies have not been considered till date by the respondents. The petitioner is also having the benefit of interim stay of all further proceedings in these writ petitions, pursuant to the Show Cause Notices issued by the respondents which is still in force from 05.06.2024.

7.Learned counsel for the petitioners has relied upon certain authorities in support of his contention that right to cross examination is mandatory.

8.On the other hand, the learned Standing Counsel appearing for the respondents has also placed reliance on certain authorities to support his contention that under the Customs Act, right to cross examination of witnesses is not mandatory. According to him, since the statements made by the respective petitioners under Section 108 of the Customs Act have not been retracted, the question of granting the right to cross examine the witnesses does not arise.

9.No prejudice would be caused to the respondents in the light of the fact that as on date, the petitioner is having the benefit of interim stay of all further proceedings pursuant to the issuance of the Show Cause

Notices to the respective petitioners to consider the petitioners' representation through their interim replies seeking for right of cross examination of the persons mentioned therein, on merits and in accordance with law within a time frame to be fixed by this Court, after affording one personal hearing to the petitioners. If the respondents come to the conclusion that the petitioners are not entitled to cross examine the witnesses and if they decide to reject the petitioners' request, by passing a speaking order in respect of the request made by the petitioners that the petitioners are not entitled to cross examine the persons, they have a right to pass a final adjudication order pursuant to the issuance of the Show Cause Notices, on merits and in accordance with law. The order passed on the petitioners' request seeking for cross examination has to be communicated to the petitioners within a period of one week from the date of passing of such an order. However, it is made clear by this Court that the order to be passed by the respondents to the respective petitioners' request for cross examination should be a speaking order.

10.With the above directions, these writ petitions are disposed of. Consequently, connected W.M.Ps. are closed. No costs.

28.02.2025

Index: Yes/No
vga

ABDUL QUDDHOSE, J.

vga

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