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W.P. No.22298 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2025

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

**W.P. No.22298 of 2022
and
W.M.P. No.21329 of 2022**

M/s.Chemplast Sanmar Ltd.,
No.9, Cathedral Road,
Chennai – 600 086.

.... Petitioner

-Vs-

1. Deputy Commissioner of Customs (Export),
DEEC Monitoring Cell,
New Custom House,
Ballard Estate,
Mumbai – 400 001.

2. Joint Director General of Foreign Trade,
No.26, Haddows Road,
4th Floor,
Shastri Bhavan (Annexe Building),
Chennai – 600 006.

.... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India,
to issue a Writ of Certiorari to call for the records of the First Respondent



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in the impugned order No.08/DC/AG/DEEC(MC)/2022-23, dated 24.05.2022 bearing DIN No.2022057700000846E02, quash the same as the proceedings under which the Impugned Order has been passed are barred by limitation or to issue any other appropriate Writ or order as this Court may deem fit and proper to the facts and circumstances of the case.

For Petitioner : Ms. Radhika Chandrasekhar
For Respondents : Mr.C. Subbu Ranga Bharathi
Central Govt. Standing Counsel
for Customs for R1 & R2

ORDER

The petitioner is engaged in the business of manufacturing and sale of speciality chemicals and other custom manufactured chemicals and caters to both the domestic and international markets. The petitioner had obtained the Advance Licences which are the subject matter of the impugned order. There is no dispute that the petitioner made imports under the cover of the Advance Licenses without payment of customs duty or on payment of customs duty at a concessional rate. The said imports were made after execution of a bond as required under Notification No.30/1997 Customs, dated 01.04.1997. The petitioner has also maintained the status of the 'star export house' till date.



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2. The learned counsel for the petitioner would submit that the first respondent issued a Bond Enforcement cum Demand Notice on 08.02.2019 requiring the petitioner to issue Export Obligation Discharge Certificates(EODC) in respect of 24 Advance Licenses issued to the petitioner by the Directorate General of Foreign Trade (DGFT) during the period between 1998 and 2000, which is after a period of 17 years from the issuance of the said documents. Pursuant to the notice to show cause, the petitioner provided the EODCs pertaining to 13 Advance Licences mentioned in the show cause notice and the same was submitted by the petitioner along with their reply letter. The petitioner in their reply to the show cause notice also questioned the maintainability of the proceedings initiated after a lapse of 17 years and requested the proceedings be dropped.

3. The learned counsel for the petitioner would submit that after an interval of two more years, the first respondent issued another Bond – Enforcement Cum Demand Notice, which re-opened proceedings after a period of 22 years and submitted that the enforcement of bond is not sustainable in law.



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4. The learned counsel for the petitioner drew the attention of this Court to Section 143 of the Customs Act, 1962. She would submit that though the said Section does not prescribe any time limit, any show cause notice will have to be issued with regard to the non-production of EODCs, within a reasonable period. According to her, since the respondents have issued the show cause notice after a lapse of 17 years in respect of the imports made by the petitioner for the period from 1998-2000, the impugned order has to be quashed.

5. In support of her contention, she drew the attention of this Court to a Division Bench Judgement of the Bombay High Court, dated 19.11.2024 passed in W.P. No.4339 of 2024 in the case of ***Mahindra and Mahindra Ltd., vs. Union of India and 3 others***, involving an identical issue and would submit that on account of the inordinate delay in issuing the show cause notice for non-production of EODCs, the Bombay High Court had quashed the impugned order.

6. The learned counsel for the petitioner also drew the attention of this Court to the following authorities :-

i) Raghav International v. Union of India (2023) 5 Centax 83 (Guj.)



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ii) Union of India v. Raghav International (2024) 20 Centax 567

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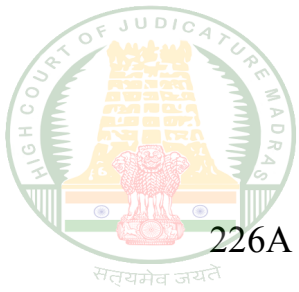
iii) Union of India v. Raghav International (2024) 20 Centax 567 (SC) – [Review Petition]

iv) Venus Apparels v. Principal Commissioner of Customs, Inland Container Depot, Tughlakabad (Export), New Delhi (2025) 30 Centax 219 (P & H).

v) Principal Commissioner of Customs v. Venus Apparels (2025) 30 Centax 220 (SC)

7. The aforesaid authorities were relied upon by the learned counsel for the petitioner to substantiate her contention that when there is an inordinate delay in the issuance of show cause notices, the Constitutional Courts have quashed the said show cause notices in cases involving claim for recovery of duty drawback by the Customs authorities. In all the aforesaid decisions, it has been held that three years time limit is a reasonable period for the issuance of the show cause notice. She would submit that a similar yardstick will have to be adopted for the case on hand as well.

8. The learned counsel for the petitioner also relied upon Rule

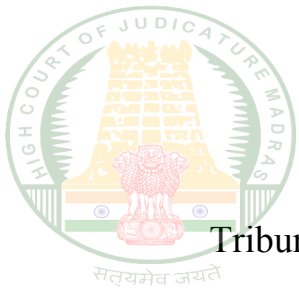


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226A of the Central Excise Rule 1944, which pertains to electronic maintenance or generation of records, returns and documents using computer. She would submit that even though the rule does not prescribe any time limit, the Circular issued by the CBIC has fixed the time limit of five years. Relying upon the aforesaid authorities and Circular, the learned counsel for the petitioner would submit that the show cause notice issued by the respondents which has culminated in the passing of the impugned order-in-original after a period of 17 years is an inordinate delay and therefore, the impugned order-in-original has to be quashed.

9. On the last hearing date on 06.06.2025, the learned Standing Counsel for the respondents placed before this Court an order, dated 02.05.2025 passed by the Hon'ble Supreme Court in SLP(C) No.5392 of 2025 in the case of ***Union of India and others vs. GMR Airport Infrastruructre Ltd.*** Relying upon Para No.9 of the said order passed by the Hon'ble Supreme Court, the learned Standing Counsel appearing for the respondents would submit that the Hon'ble Supreme Court is looking into the larger issue involving inordinate delay and the Hon'ble Supreme Court has also stated that if any matter comes up for hearing before the



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Tribunal or any of the High Courts on the subject in question, the hearing may be deferred till the Hon'ble Supreme Court takes an appropriate call in the matter. Further, he sought time to give full particulars of the pending matter before the Hon'ble Supreme Court, referred to supra and furnish the same to this Court on the next hearing date.

10. Today, the learned Standing Counsel appearing for the respondents has filed a Memo giving particulars of the matter pending before the Hon'ble Supreme Court in SLP (C) No.5392 of 2025 referred to supra. A Circular, dated 07.05.2025 has also been attached along with the order of the Hon'ble Supreme Court. The said Circular has also been issued by the Ministry of Finance, Department of Revenue, Government of India. As seen from the said Circular, it is clear that the Hon'ble Supreme Court in SLP (C) No.5392 of 2025, which has been relied upon was dealing only with cases concerning delayed adjudication and not dealing with cases which involves inordinate delay in issuing show cause notices. In view of the same, the order, dated 02.05.2025 passed by the Hon'ble Supreme Court in SLP (C) No.5392 of 2025 has no bearing for the facts of the instant case. In the instant case, this Court is dealing with the inordinate delay in issuance of show cause notice and not



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dealing with inordinate delay in adjudication.

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11. Admittedly in the instant case, the first respondent issued a Bond Enforcement cum Demand Notice only on 08.02.2019 requiring the petitioner to issue Export Obligation Discharge Certificates(EODCs) in respect of 24 Advance Licences issued to the petitioner by DGFT during the period of 1998 and 2000, which is after a period of 17 years from the issuance of the said documents. It is also the petitioner's case that they have fulfilled all the export obligations in respect of the imports made by them between 1998 and 2000, which is the subject matter of the show cause notice issued by the respondents, which has been issued with an inordinate delay of 17 years. However it is the petitioner's case due to the long lapse of time, they are able to produce EODCs pertaining to 13 Advance Licences alone out of 24 Advance Licences. They have also categorically stated that due to the long lapse of time, the EODCs pertaining to the remaining 11 Advance Licences are not available with them. It is also not their case that they have never produced EODCs for the remaining Advance Licences.

12. It is also to be noted that after an interval of two more years



from 08.02.2019 when the first show cause notice was issued, the first respondent had issued another Bond Enforcement cum Demand Notice reopening the proceedings after a period of 22 years.

13. Section 143 of the Customs Act, 1962 reads as follows :-

143. Power to allow import or export on execution of bonds in certain cases.

(1) Where this Act or any other law requires anything to be done before a person can import or export any goods or clear any goods from the control of officers of customs and the Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied that having regard to the circumstances of the case, such thing cannot be done before such import, export or clearance without detriment to that person, the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] may, notwithstanding anything contained in this Act or such other law, grant leave for such import, export or clearance on the person executing a bond in such amount, with such surety or security and subject to such conditions as the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] approves, for the doing of that thing within such time after the import, export or clearance as may be specified in the bond.

(2) If the thing is done within the time specified in the bond, the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] shall cancel the bond as discharged in full and shall, on demand, deliver it, so cancelled, to the person who has executed or who is entitled to receive it; and in such a case that person shall not be liable to any penalty provided in this Act or, as the case may be, in such other law for the contravention of the provisions thereof relating to the doing of that thing.

(3) If the thing is not done within the time specified in the bond, the



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[Assistant Commissioner of Customs or Deputy Commissioner of Customs] shall, without prejudice to any other action that may be taken under this Act or any other law for the time being in force, be entitled to proceed upon the bond in accordance with law.

Though the aforesaid Section does not prescribe any time limit, this Court is of the considered view that any show cause notice will have to be issued for non-production of EODCs within a reasonable time. This Court is in agreement with the view taken by the Division Bench of the Bombay High Court, dated 19.11.2024 in W.P. No.4339 of 2024 in the case of ***Mahindra and Mahindra Ltd., vs. Union of India and 3 others*** others. In the said decision, the Division Bench of the Bombay High Court while dealing with an identical issue had quashed the show cause notice on account of the inordinate delay in issuing the show cause notice for non-production of EODCs by the importer.

14. Rule 226A of the Central Excise Rule, 1944, which pertains to electronic maintenance or generation of records, returns and documents using computer also does not stipulate any time limit and the Circular issued by the CBIC by considering Rule 226A of the Central Excise Rule, 1944 has fixed the time limit as five years. The same yardstick



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even if it is applied to the case on hand, it can be conclusively

established that the 17 years delay in the issuance of the show cause notice on account of non-production of EODCs by the petitioner is an inordinate delay and therefore, the same will have to be quashed by this Court. The other decisions relied upon by the learned counsel for the petitioner referred to supra pertaining to duty draw back claim have also considered the consequences of inordinate delay in issuance of show cause notice. The Constitutional Courts in those decisions while dealing with Rule 16 of Duty Drawback Rules, 1995, which also did not provide for any time limit for issuing show cause notices held that the show cause notice will have to be issued within a reasonable period and the Constitutional Courts held in those decisions that the reasonable period is three years. In those decisions as well, there was an inordinate delay in the issuance of show cause notice and the Constitutional Courts quashed the show cause notices / order-in-original on account of the inordinate delay.

15. For the foregoing reasons on account of the inordinate delay in issuance of the show cause notice, i.e., the show cause notice having been issued after a lapse of 17 years, necessarily the impugned order-in-



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original has to be quashed by this Court. In fact as seen from the proceedings, which culminated in the passing of the impugned order-in-original at the first instance, the petitioner had raised the plea of inordinate delay through the reply sent by the petitioner to the respondents for the show cause notice.

16. In the result, the impugned order-in-original, dated 24.05.2022 passed by the 1st respondent, is hereby quashed and the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

20.06.2025

Index: Yes/ No
Speaking order / Non speaking order
Neutral citation : Yes / No
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ABDUL QUDDHOSE, J.

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To :

1. The Deputy Commissioner of Customs (Export),
DEEC Monitoring Cell,
New Custom House,
Ballard Estate,
Mumbai – 400 001.

2. The Joint Director General of Foreign Trade,
No.26, Haddows Road,
4th Floor,
Shastri Bhavan (Annexe Building),
Chennai – 600 006.

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and
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