WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **28.03.2025**

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P. No.24007 of 2022
and
W.M.P.No.22977 of 2022

M/s.Sakkthi Polymers,
Rep. by its Partner,
Mr.P. Mohan,
Valayankadu, Kuppanur PO,
Sankagiri, Tamil Nadu 637 301. ... Petitioner

Vs.

1.The Commissioner of Customs,
Chennai II Commissionerate,
Customs House, No.60, Rajaji Salai,
Chennai - 600 001.

2. The Assistant Commissioner of Customs,
Chennai II Commissionerate,
Customs House, No.60, Rajaji Salai,
Chennai - 600 001.

3. The Assistant Commissioner of Customs,
O/o. The Commissioner of Customs,
Customs House, New Harbur Estates,
Tuticorin 628 004. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified mandamus, calling for the entire records

https://www.mhc.tn.gov.in/judis

WEB COPY

pertaining to the order in original Ref. C. No.VIII/20/129/2021-RF, dated 11.05.2022 passed by the 3rd respondent and the order in Ref. F.No.S.R.No.209/2022-Refunds, dated 08.07.2022 passed by the 2nd respondent and quash the same is illegal, violative and direct the 1st respondent to allow the refund as claimed by the petitioner in a time bound period.

For Petitioner	:	Mr. Derrick Sam for Mr.N. Umapathi
For respondents	:	Mr. Umesh Rao SSC

ORDER

This writ petition has been filed, challenging the impugned orders dated 11.05.2022 and 08.07.2022 passed by Tuticorin Customs and Chennai Customs respectively. Under the impugned orders, the petitioner's request for refund has been rejected. The Tuticorin Customs has rejected the petitioner's request on the ground that the claim for refund cannot be considered under Section 27 of the Customs Act, 1962 as the petitioner's claim does not fulfill the provisions of para 2(1) Customs Refund Application (Form) Regulations, 1995. The Chennai Customs has rejected the petitioner's request for refund on the ground that the Bill of Entry was filed by the petitioner in Tuticorin Customs and does not come under

https://www.mhc.tn.gov.in/judis

WEB COPY

Chennai Customs Jurisdiction.

2. According to the petitioner, arbitrarily by total non application of mind, the impugned order has been passed by the respondents, rejecting the petitioner's request for refund. According to the petitioner, despite being an admitted fact that the petitioner had made double payment towards customs duty in respect of the subject bill of entry No.2210257/02.01.2021, the respondents failed to order for refund in favour of the petitioner. The petitioner also categorically contends that the claim for refund will not fall under Section 27 of the Customs Act in view of the reasons stated supra.

3. A counter has been filed by the respondent Nos.1 and 2, reiterating the contents of the impugned order. They contend that the claim of the applicant being a refund request, it will fall under Section 27 of the Customs Act. Admittedly, the case of the applicant is a request, seeking for refund only on account of the double payment made by the petitioner towards customs duty in respect of the very same bill of entry. The petitioner has paid the customs duty for the subject bill of entry, both before the Tuticorin Customs as well as the Chennai Customs. Section 27 of the Customs Act,

https://www.mhc.tn.gov.in/judis

WEB COPY

1962 deals with a claim for refund of duty and interest paid, allowing individuals and entities to apply for refund within a specific time frame and conditions. However, the said section applies only pursuant to an order of assessment, which entitles the applicant to claim for refund. In the instant case, the request for refund is not based on any assessment order, but, is based on inadvertent double payment of the Customs duty by the petitioner. Hence, this Court is of the considered view that erroneously by total non application of mind, the Tuticorin Customs has held that Section 27 of the Customs Act gets attracted. A request for refund arising out of an inadvertent double payment of Customs duty will not fall within the purview of Section 27 of the Customs Act due to the aforesaid reason. Therefore, this Court is of the considered view that Section 27 of the Customs Act does not get attracted.

4. In fact, as seen from the order in original dated 11.05.2022, which is also challenged by the petitioner in this writ petition, the respondents themselves have admitted that an application for refund shall be made in the prescribed form before the Assistant Commissioner of Customs / Deputy Commissioner of Customs having jurisdiction over the customs port, where

https://www.mhc.tn.gov.in/judis

WEB COPY

the duty of customs was paid. The petitioner has already paid the customs duty before the Tuticorin Customs, where cargo had arrived. Therefore, necessarily, having made double payment of customs duty at Chennai port as well, the request for refund of the customs duty ought to have been accepted by the respondents. However, by total non application of mind to the same, the Tuticorin Customs has passed the impugned order in original dated 11.05.2022 and the Chennai Customs has issued the impugned communication dated 08.07.2022.

5. As observed earlier, Section 27 of the Customs Act does not get attracted, in view of the fact that the petitioner has already paid the customs duty before the Tuticorin Customs, which is within the jurisdiction of the Tuticorin port, where the cargo imported by the petitioner had landed and the bill of entry was also filed.

6. It is clear from the aforesaid undisputed facts that the impugned order / communication, rejecting the petitioner's request for refund has been issued by total non application of mind to Section 27 of the Customs Act. Therefore, necessarily, the impugned order and communication have to be

https://www.mhc.tn.gov.in/judis

WEB COPY

quashed and this writ petition has to be allowed.

7. Accordingly, the impugned order and communication dated 11.05.2022 and 08.07.2022 are hereby quashed and the writ petition is allowed by directing the second respondent to refund the customs duty paid by the petitioner within a period of eight weeks from the date of receipt of a copy of this order as well as the eligible interest if any. No costs. Consequently, connected miscellaneous petition is closed.

28.03.2025

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
ab

To
1.The Commissioner of Customs,
Chennai II Commissionerate,
Customs House, No.60, Rajaji Salai,
Chennai - 600 001.

2. The Assistant Commissioner of Customs,
Chennai II Commissionerate,
Customs House, No.60, Rajaji Salai,
Chennai - 600 001.

3. The Assistant Commissioner of Customs,
O/o. The Commissioner of Customs,
Customs House, New Harbur Estates,
Tuticorin 628 004.

https://www.mhc.tn.gov.in/judis

WEB COPY

ABDUL QUDDHOSE. J.,

ab

W.P. No.24007 of 2022

28.03.2025

https://www.mhc.tn.gov.in/judis