THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2025

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P. No.39048 of 2024
and
W.M.P. Nos.42287 and 42288 of 2024

M/s Variety Gift & Stationery,
No.14, 1st Cross, BBT Street
Mamulpet, Bangalore - 560 003
Rep. By its Proprietor Mr.Kumar Jain ... Petitioner

-Vs-

The Assistant Commissioner of Customs (Gr.2)
O/o. The Commissioner of Customs, Chennai II (Import
Customs House, Chennai - 600 001. ... Respondent

Prayer : Writ Petition filed Article 226 of the Constitution of India, for Writ of Certiorari, to call for the records pertaining to the impugned exparte Order in Original No.109953/2024 dated 17.10.2024 passed by the respondent herein and to quash the same, in so far as, the said exparte impugned order has been passed by the respondent without affording an opportunity of personal hearing and also by not considering the reply dated 18.05.2024 furnished by the petitioner to the show cause notice dated 18.04.2024.

For Petitioner : Mr. S. Baskaran
For Respondent : Ms.Anu Ganesan
Sr. Panel Counsel

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This writ petition has been filed challenging the impugned order-in-original, dated 17.10.2024 passed by the respondent on the following grounds :-

a) The impugned order-in-original has been passed in violation of principles of natural justice;

b) The respondent has not adhered to the CBIC Circular, dated 10.03.2017 by affording three personal hearings to the petitioner with sufficient interval of time; and

c) The reply sent by the petitioner to the show cause notice has not been considered in the impugned order-in-original.

2. Under the impugned order-in-original, the respondent has rejected the petitioner's classification under CTH 32130000, but instead has re-classified under CTH 95030090 and has confirmed the differential duty payable by the petitioner and has also levied interest as per the

provisions of Section 28AA of the Customs Act, 1962. The respondent has ordered for confiscation of the goods and has also imposed redemption fine under Section 125(1) of the Customs Act, 1962. The respondent has also levied penalty under Section 112A of the Customs Act, 1962.

3. The learned counsel for the petitioner drew the attention of this Court to the reply, dated 18.05.2024 sent by the petitioner to the respondent to the show cause notice sent by them. He also drew the attention of this Court to the impugned order-in-original and would submit that despite a reply having been sent, in the impugned order-in-original, the respondent has stated that no reply was sent by the petitioner.

4. The learned counsel for the petitioner also drew the attention of this Court to the Board's Circular No.1053/2/2017-CX and in particular, he drew the attention of this Court to the Clause 14.3, which deals with personal hearing and would submit that the respondent has violated Clause 14.3, by not affording three personal hearings to the petitioner with sufficient intervals of time.

5. The learned counsel for the petitioner drew the attention of this Court to the impugned order-in-original and would submit that as seen from the same, the respondent has sent personal hearing notices on 09.10.2024, 10.10.2024 and 11.10.2024, without giving sufficient intervals of time as stipulated under the Circular.

6. He also submits that the regulations contained in the Board's Circular, dated 10.03.2017, referred to supra are mandatory in nature and have to be strictly followed by the respondent. Therefore, on the ground of violation of principles of natural justice, the petitioner seeks for quashing of the impugned order-in- original.

7. The learned counsel for the petitioner would submit that if the impugned order is quashed and remanded back to the respondent for fresh consideration after affording three personal hearing to the petitioner, the petitioner will be able to convince the respondent that the classification declared by the petitioner is the correct classification.

8. On the other hand, the learned Senior Panel Counsel appearing

for the respondent would retirerate the contents of the order-in-original as well as the contents of the counter affidavit filed by the respondent before this Court. She would submit that the respondent has adhered to the Board Circular by affording three personal hearings to the petitioner on 09.10.2024, 10.10.2024 and 11.10.2024. According to her, as seen from the impugned order-in-original, the respondent has not committed violation of principles of natural justice and has afforded a fair hearing to the petitioner.

9. The learned Senior Panel Counsel appearing for the respondent would also submit that since the last personal hearing notice sent by the respondent was received by the petitioner admittedly on 11.10.2024, the petitioner could have approached the respondent before the passing of the impugned order-in-original, which was passed only on 17.10.2024. According to her, there is no violation of principles of natural justice committed by the respondent before passing of the impugned order-in-original.

10. The Division Bench of this Court as well as this Court in its order has already held that the directions issued in the Board Circular No.1053/2/2017-CX, dated 10.03.2017 are mandatory in nature.

11. Admittedly, the personal hearing dates for the petitioner were fixed on 09.10.2024, 10.10.2024 and 11.10.2024, but however, the petitioner failed to appear on the said dates. However, as seen from Clause 14.3 of the Board's Circular, dated 10.03.2017, it has been made clear that there should be sufficient interval of time between the personal hearing dates and further it has been made clear that separate notice of personal hearing will have to be sent by the respondent for each and every personal hearing. However, as seen from the personal hearing dates, the respondent has fixed the date of personal hearings consecutively without any sufficient interval of time as the hearing dates were fixed on 09.10.2024, 10.10.2024 and 11.10.2024 which are consecutive dates.

12. Clause 14.3. of the Board Circular, dated 10.03.2017 is reproduced hereunder :-

> **14.3 Personal hearing : After having given a fair opportunity to the noticee for replying to the show cause notice, the adjudicating authority may proceed to fix a date and time for personal hearing in the case and request the assessee to appear before him for a personal hearing by himself or through an authorised representative. At least**

three opportunities of personal hearing should be given with sufficient interval of time so that the noticee may avail opportunity of being heard. Separate communications should be made to the noticee for each opportunity of personal hearing. In fact separate letter for each hearing / extension should be issued at sufficient interval. The Adjudicating authority may, if sufficient cause is shown, at any stage of proceeding adjourn the hearing for reasons to be recorded in writing. However, no such adjournment shall be granted more than three time to a noticee.

13. The petitioner has also placed on record before this Court the reply sent by the petitioner to the respondent, dated 18.05.2024. Admittedly, the said reply has not been considered in the impugned order-in-original. The petitioner in the said reply has categorically contended by giving reasons as to why the classification declared by the petitioner is the correct classification. However, in the impugned order-in-original, the respondent has stated that no reply was received from the petitioner. The impugned order-in-original is dated 17.10.2024. The reply sent by the petitioner was on 18.05.2024 and received by the respondent on 20.05.2024. When the impugned order-in-original has been passed only on 17.10.2024, the respondent ought to have

considered the reply submitted by the petitioner, which is dated 18.05.2024 and admittedly, the same was also received by the respondent on 20.05.2024. However, in the impugned order-in-original, it has been stated that no reply was received from the petitioner by total non application of mind.

14. For the foregoing reasons, this Court is of the considered view that the impugned order-in-original has been passed in violation of principles of natural justice by not considering the reply sent by the petitioner dated 18.05.2024 and also by not adhering to Clause 14.3. of the Board Circular, dated 10.03.2017 which makes it clear that three personal hearing notices will have to be given to the petitioner by fixing personal hearing dates at sufficient intervals of time.

15. For the foregoing reasons on account of violation of principles of natural justice, the impugned order-in-original has to be quashed and the matter will have to be remanded back to the respondent for fresh consideration, on merits and in accordance with law within a time frame to be fixed by this Court, after adhering to the principles of natural justice and by affording three personal hearings to the petitioner. Accordingly, the impugned order-in-original, dated 17.10.2024 is hereby

quashed and this writ petition is allowed by remanding the matter back to the very same respondent for fresh consideration on merits and in accordance with law by adhering to the principles of natural justice and by affording three personal hearings to the petitioner. The respondent shall pass final orders, within a period of twelve weeks from the date of receipt of a copy of this order.

No costs. Consequently, connected miscellaneous petitions are closed.

25.07.2025

Internet:Yes/No
Index:Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes/No
vsi2

To
The Assistant Commissioner of Customs (Gr.2)
O/o. The Commissioner of Customs, Chennai II (Import
Customs House, Chennai - 600 001

ABDUL QUDDHOSE, J.

vsi2

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