BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.07.2025

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD).No.20108 of 2025
and
W.M.P.(MD).No.15476 of 2025

M/s.Sri Sairam Agro Foods,
Represented by its Proprietor,
V.Nandagopalan. ... Petitioner

Vs.

1.The Commissioner of GST and
Central Excise (Appeals) Coimbatore,
Circuit Office at Trichy,
No.1-Williams Road, Cantonment,
Trichy - 620 001.

2.The Additional Commissioner Customs,
Custom House,
New Harbour Estate,
Tuticorin - 628 008.

3.M/s.Pentagon Shipping Service,
2H/21, Kamatchi Illam,
First Floor, 1st Street,
Kathirvel Nagar Main Road,
Tuticorin - 628 008. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, calling for the records in respect of impugned Order-in-appeal No.17/2025-TTN-(CUS)-APP dated 31.03.2025 in A.No.C24/48/2024-TTN-(CUS)-APP - DIN 20250359KV0000054E88 passed by the first respondent and quash the same and be pleased to direct the first respondent to hear the appeal filed by the petitioner on merits.

For Petitioner	:	Mr.S.Renganathan
For R-1 & R-2	:	Mr.N.Dilip Kumar Senior Standing Counsel

ORDER

This Writ Petition is disposed of at the time of admission after hearing the learned counsel for the petitioner and the respondents 1 and 2 and after dispensing with the notice on the third respondent as no adverse orders are going to be passed against them at this stage in this Writ Petition.

2. The petitioner has challenged the impugned order in Appeal No.17/2025-TTN(CUS)-APP dated 31.03.2025. By the impugned order, the petitioner's appeal in Appeal No.C24/48/2024-TTN(CUS)-APP has been dismissed on the ground of limitation as the appeal was filed purportedly beyond the limitation prescribed under Section 128 of the Customs Act, 1962, against Order-in-Original TUT-CUSTM-PRV-ADC-12/2024 dated 16.02.2024. By the impugned order, yet another appeal filed by the Custom House Agent,

namely, M/s.Pentagon Shipping Service against the aforesaid order, imposing a penalty under Section 114 of the Customs Act, 1962, has been allowed. The operative portion of the impugned order reads as under:

> *"15.1. The appeal A.No.C24/48/2024-TTN(CUS)-APP filed by M/s Sri Sairam Agro Foods, (appellant -1/exporter), Trichy is rejected as the appellant has not fulfilled the conditions stipulated under Section 128 of the Customs Act, 1962 as the Appeal has been filed beyond prescribed time limit.*
>
> *15.2. The appeal A.No.C24/29/2024-TTN(CUS)-APP filed by M/s Pentagon Shipping Service, (appellant -II/Customs broker), Tuticorin is allowed. The penalty imposed in the Order-in-Original No.TUT-CUSTM-PRV-ADC-12/2024 dated 16.02.2024 under Section 114 of the Customs Act, 1962 on the Customs Broker M/s. Pentagon Shipping Service, Tuticorin is set aside."*

3. The order impugned before the first respondent/Appellate Commissioner is Order-in-Original TUT-CUSTM-PRV-ADC-12/2024 dated 16.02.2024. The operative portion of the said order reads as under:

> *"4. I impose a penalty of Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousands only) on the Exporter, M/s. Sri Sairam Agro Foods, in terms of section 114(i) of the Customs Act,*

1962 for attempting to export "Indian Big Onions" classified under 07031019 (CTH) which is prohibited for export vide DGFT Notification No. 49/2023 dt 07.12.2023.

5. I impose a penalty of Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousands Only) on the Exporter, M/s. Sri Sairam Agro Foods, under section 114AA of the Customs Act. 1962 for intentionally mis-declaring the entire Cargo as "Indian Small Onions" thereby rendering the goods liable for confiscation Under Section 113 of the Customs Act, 1962.

6. I impose a Redemption fine of Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousands Only) on the exporter M/s. Sri Sairam Agro Foods, in lieu of confiscation in terms of Section 125 of the Customs Act, 1962.

7. I impose a penalty of Rs. 2,00,000/- (Rupees Two Lakhs Only) on the Customs Broker M/s. Pentagon Shipping Service, Tuticorin in terms of Section 114 of the Customs Act, 1962."

4. It is the specific case of the petitioner that the aforesaid Custom House Agent has misutilized the petitioner's Import and Export Code and has falsely filed a shipping bill as if the petitioner was attempting to export onions, which were prohibited during the relevant point of time in terms of DGFT Notification

No.49/2023 dated 07.12.2023. The specific case of the petitioner is that the petitioner has not filed any shipping bill either by itself or through the said Custom House Agent and the petitioner has been falsely implicated.

5. On the other hand, the learned Senior Standing Counsel for the respondents 1 and 2 would draw my attention to para 10.1 of the aforesaid Order-in-Original, which reads as follows:

> *"10.1 M/s. Sri Sairam Agro Foods, Trichy, the Exporter, vide their letter dated 13.02.2024 have accepted the fact that Big Onions and Small Onions were mixed in the cargo attempted for export and since the Big Onions seized are a perishable commodity, they had requested for release of the Cargo seized. They have further submitted that they agreed to cooperate with Department and pay all fines, penalty imposed without fail."*

6. The contention of the petitioner is that the petitioner has neither exported nor filed any shipping bill nor had filed the above mentioned letter. The matter requires a detailed consideration. Considering the fact that the petitioner claims that the petitioner had neither received a show cause notice nor was heard before the Order-in-Original was passed nor the Order-in-Original was served to the petitioner earlier, to balance the interest of the petitioner and

the respondents, the case is remitted back to the first respondent/Appellate Commissioner to redo the exercise. It is open for the petitioner to request the Appellate Commissioner to summon for the records before passing final orders. This exercise shall be completed by the first respondent within a period of six (6) weeks from the date of receipt of a copy of this order.

7. Accordingly, the Writ Petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

24.07.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm

To
1.The Commissioner of GST and
Central Excise (Appeals) Coimbatore,
Circuit Office at Trichy,
No.1-Williams Road, Cantonment,
Trichy - 620 001.

2.The Additional Commissioner Customs,
Custom House,
New Harbour Estate,
Tuticorin - 628 008.

C.SARAVANAN,J.

Lm

W.P.(MD).No.20108 of 2025

24.07.2025