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* **IN THEHIGH COURTOF DELHIAT NEW DELHI**

Date of decision: 23rd December, 2025
Uploaded on: 26th December, 2025

\+ **W.P.(C) 5668/2019**

RAMESH WADHERA .....Petitioner
Through: Mr. Naveen Malhotra and Mr. Ritvik Malhotra, Advs. (M: 9990899563)

versus

ADDITIONAL COMMISSIONER OF CUSTOMS.....Respondent
Through: Mr. Harpreet Singh, SSC, CBIC with Ms. Suhani Mathur, Adv.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

<u>Prathiba M. Singh, J.</u> (Oral)

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioner under Article 226 of the Constitution of India, *inter alia*, assailing the impugned order dated 16th May, 2019 *(hereinafter, 'impugned order')* as also the Show Cause Notice dated 16th September, 2016 issued by the Additional Commissioner of Customs (Export), ICD, Tughlakabad, New Delhi *(hereinafter, 'impugned SCN')*.

3. *Vide* the impugned order, the request of the Petitioner for cross-examination has been denied in the following terms:

> *"Please refer to your letter dated 14.05.2019 on the above subject requesting for cross examination of the witnesses and passing of an order in this regard.*
>
> *2. In this context it is hereby informed that no doubt interim replies had been submitted by the noticees on*

04.01.2017 but the same have been furnished in their individual capacity. ***<u>They have among others requested for cross examining the witnesses and the DRI officials who had investigated the case.</u>*** *During the course of hearing on 08.03.2019 before the undersigned you had requested for supplying the copies of the non- RUDs; and it was duly informed by the undersigned that the same are in the custody of the investigative agency i.e. the DRI. However, at that time the undersigned also felt that copies of the shipping bills, invoices and market inquiry reports may be necessary to decide the matter.* ***<u>However, on reappreciation of the details quoted in the show cause notice and the RUDs the undersigned has observed that all the details necessary for adjudication of the case are available in the SCN. Therefore, there is no need for seeking non-RUDs.</u>*** *Accordingly, the undersigned through my office letter dated 04.04.2019 had called all the notices to appear for personal hearing before me on 05.04.2019. It had also been conveyed therein that all the notices had signed on the RUDs to the SCN which contained the necessary details viz.Panchnama, statement Now you are stating that you had received that said letter only on 16.04.2019. But I find that later on you have not made any reference to the undersigned till 14.05.2019 (i.e. after a lapse of one month from the receipt of my letter). As regards the issue of cross examination of the investigating officers of the DRI.* ***<u>I would like to emphasize that any statement tendered before the customs officers under Section 108 of the Customs Act, 1962 are admissible as evidence. I find that the main masterminds of the fraud have accepted their culpability and in the taken of the same have signed on the panchnama as well as on their respective statements under the Act. Thus I don't consider it imperative to allow cross examination of the DRI officer in this matter. Regarding the cross</u>***

> ***<u>examination of the witnesses. I find that most of the noticees are not traceable as the letters written to them have been received undelivered form their given addresses. And, as regards, those who are available, I would like to honour the sanctity accorded to their statements tendered under Section 108 of the Customs Act, 1962 as the same are admissible as evidence.</u>***
>
> *4. I would request you to appear for personal hearing in the matter in the coming week from 20.05.2019 to 24.05.2019 as per your convenience during the office hours. But if you fail to appear and /or if you don't file any defense. I would be constrained to decide the matter ex parte as the same is considerable delayed"*

4. A brief background of the present case is that, the impugned SCN was issued by the Respondent Department against Mr. Ramesh Wadhera and his son Mr. Rahul Wadhera on the ground that they are indulging in fraudulent availment of drawbacks by exporting readymade garments through a large number of bogus firms/companies.

5. According to the impugned SCN, the allegation raised against the Petitioner is that sub-standard quality of goods were being exported by various bogus firms, by overvaluing the same, only to avail of more drawbacks. For the said purpose, services of two Custom Broker firms namely M/s Chander Sharma and M/s Innovative Cargo Services were being used by the Petitioner.

6. Thereafter, the officials of Directorate of Revenue Intelligence *(hereinafter, 'DRI')* had conducted searches at premises of the Petitioner and associated firms, and it was found that none of the firms even exist. Pursuant thereto, impugned SCN was issued to various noticees and statements of the

DRI officials were also recorded.

7. *Vide* letter dated 4th January, 2017, a vague request was made by the Petitioner for cross-examination in the following terms:

> *"'Kind attention of the adjudicating authority is invited to the judgment of the Hon'ble Supreme Court in the case of Eicher Tractors v/s Commissioner, of Customs reported in- 2000 (122) ELT 321 (S.C.), wherein the Apex Court has laid down Rules how the make the valuation.*
>
> ***I also reserve right to cross-examine the co-noticees and officials of DRI who investigated the present case. I may be allowed to cross-examined the said persons during the course of hearing. I may be given personal hearing into the matter. I would like cross -examine the officials who have given the let export order regarding the consignment which was recalled from Mundra Port and lying at the ICD regarding the firm which I was controlling.***
>
> *I reserve my right to alter or amend the submissions made hereinabove and reserve my right for filing the written submissions after cross-examination of the witnesses and after the personal hearing"*

8. This request was also reiterated by the Petitioner *vide* letter dated 14th May, 2019 in similar terms, which was rejected *vide* the impugned order. The letter dated 14th May, 2019 reads as under:

> *"In the present on the last date of hearing I appeared before your honour on behalf of noticee No. 13 to 25 and for 28 mentioned in the notice of hearing. Matter was adjourned In the present case interim reply was filed on 04.01.2017 and in the reply a request was made for cross examination of the witnesses. Your honour has not passed any speaking order for the same whether the same is being allowed or being rejected.*

> *Again matter was fixed on 15.04.2019 but letter of hearing was received on 16.04.2019. this fact can be verified from tracing report (ED 131842043in). again matter has been fixed for today but no hearing notice has been given to above notices this date has been informed to me by reena advocate appearing for other notices*
> ***Your honour is requested to pass a speaking order so that cross examination can be done of the witnesses or in the facts and circumstances, final written submission can be filed, and not to pass any ex-party order without hearing.***"

9. Further, reliance is placed by ld. Counsel for the Petitioner on the order passed by a coordinate Bench of this Court in ***W.P.(C) 12836/2022*** titled ***Ramesh Wadhera vs. The Commissioner of Customs and W.P.(C) 12333/2022*** titled ***Sanjeev Maggu vs. Commissioner of Customs, ACC (Exports), New Customs House, New Delhi.***

10. Heard. The impugned order clearly records that most of the noticees to whom notices were issued in fact, even failed to appear for personal hearing and most of the notices came back as the firms were found to be non-existent.

11. Under such circumstances, the vague and ambiguous request for cross-examination of officials of DRI and co-noticees is nothing but an attempt to delay the proceedings in the impugned SCN, especially when largescale drawbacks are attempted to be availed of in this matter, by the Petitioner.

12. Moreover, the DRI officials are working in their official capacity and cannot be subjected to cross-examination unless there is a reason to do so, which has not been set out in the request filed by the Petitioner.

Additionally, this Court has, in ***W.P.(C) 4576/2026*** titled ***M/s Vallabh Textiles vs. Additional Commissioner Central Tax GST, Delhi East and Ors*** has held that the right to cross examination is not an unfettered and absolute right. Prejudice has to be shown which would lead to a conclusion that without cross examination substantial justice cannot be done. The relevant portion of the said decision in ***M/s Vallabh Textiles (Supra)*** reads as under:

> *"18. **A perusal of the above decisions reveals that while cross-examination would be required in certain cases, it need not be given as a matter of right in all cases. The provision of the opportunity to cross-examine depends on the facts and circumstances of each case and is warranted only when the party seeking such an opportunity is able to demonstrate that prejudice would be caused in the absence thereof.***
> *19. The Court is of the considered view that parties cannot, by praying for cross-examination, cannot convert Show-cause Notice proceedings into mini-trials. **Persons seeking cross-examination ought to give specific reasons why cross-examination is needed in a particular situation and that too of specific witnesses. A blanket request to cross-examine all persons whose statements have been recorded by the Department, many of whom are typically employees, sellers, purchasers, or other persons connected to the entity under investigation, cannot be sustained.** If a prayer for cross-examination is made, the Authority has to consider the same fairly and if the need is so felt in respect of a particular person, the same ought to be permitted. If not, the Authority can record the reasons and proceed in the case. Moreover, cross examination need not also be of all persons whose statements are recorded. It could be permitted by the Authority in case of some persons and not all."*

13. In the present case, all the firms are alleged to be fraudulent and are

alleged to have been set up by the Petitioner to avail of drawbacks. Thus, the Petitioner is fully conscious of the background of all these co-noticees. The Petitioner cannot pretend that there is no knowledge of these co-noticees. Hence, the request for cross-examination is also not *bona fide*.

14. Accordingly, the impugned order does not deserve to be interfered with.

15. Any additional reply to the impugned SCN is permitted to be filed by the Petitioner by 20th January, 2026. Upon filing the reply, the Adjudicating Authority shall issue to the Petitioner, a notice for personal hearing.

16. The Petitioner shall appear before the Adjudicating Authority on the date fixed for personal hearing, and shall make submissions. The notice for personal hearing shall be communicated to the Petitioner on the following email address and mobile No:

- ***Email: naveenmalhotra470@gmail.com***
- ***Mobile No.: 9810035082***

17. The impugned SCN shall now be decided within a period of three months by the Adjudicating Authority, considering that the SCN dates back to 2016. The order dated 16th May 2019 does not warrant any interference.

18. The petition is disposed of in these terms. Pending Applications, if any are also disposed of.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

DECEMBER 23, 2025/kk/sm