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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 24th February, 2025.

+ **W.P.(C) 10758/2024 & CM APPL. 44291/2024**

MOHAMMAD RAFIQUE

.....Petitioner

Through: Mr. Tarun Gulati, Senior Advocate
with Mr. Puneet Agrawal, Mr. Yuvraj
Singh, Ms. Shruti Garg, Ms. Shruti &
Mr. Chetan Kumar Shukla, Advs.

versus

THE COMMISSIONER OF CUSTOMS & ORS.Respondents

Through: Mr. Harpreet Singh, Senior Standing
Counsel along with Mr. Jai Ahuja and
Ms. Suhani Mathur, Advs.
Mr. Sushil Raaja, Adv.
Mr. Harish Kumar Garg, Adv. for R-2.

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WITH

+ **W.P.(C) 10759/2024 & CM APPL. 44321/2024**

MOHAMMED ABID

.....Petitioner

Through: Mr. Tarun Gulati, Senior Advocate
with Mr. Puneet Agrawal, Mr. Yuvraj
Singh, Ms. Shruti Garg, Ms. Shruti &
Mr. Chetan Kumar Shukla, Advs.

versus

COMMISSIONER OF CUSTOMS & ORS.Respondents

Through: Mr. Harpreet Singh, Senior Standing
Counsel along with Mr. Jai Ahuja and
Ms. Suhani Mathur, Advs.

39

WITH

+ **W.P.(C) 10769/2024 & CM APPL. 44337/2024**

M/S LAXMI INDUSTRIAL CORPORATION & ANR.....Petitioners

Through: Mr. Tarun Gulati, Senior Advocate
with Mr. Puneet Agrawal, Mr. Yuvraj
Singh, Ms. Shruti Garg, Ms. Shruti &
Mr. Chetan Kumar Shukla, Advs.

versus



THE COMMISSIONER OF CUSTOMS & ORS.Respondents

Through: Mr. Harpreet Singh, Senior Standing
Counsel along with Mr. Jai Ahuja and
Ms. Suhani Mathur, Advs.

40

WITH

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W.P.(C) 10782/2024 & CM APPL. 44370/2024

M/S JAI DURGA ENTERPRISES & ANR.Petitioners

Through: Mr. Tarun Gulati, Senior Advocate
with Mr. Puneet Agrawal, Mr. Yuvraj
Singh, Ms. Shruti Garg, Ms. Shruti &
Mr. Chetan Kumar Shukla, Advs.

versus

THE COMMISSIONER OF CUSTOMS & ORS.Respondents

Through: Mr. Harpreet Singh, Senior Standing
Counsel along with Mr. Jai Ahuja and
Ms. Suhani Mathur, Advs.

41

WITH

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W.P.(C) 10789/2024 & CM APPL. 44381/2024

M/S HASHMI IMPORTS P LTD. & ANR.Petitioners

Through: Mr. Tarun Gulati, Senior Advocate
with Mr. Puneet Agrawal, Mr. Yuvraj
Singh, Ms. Shruti Garg, Ms. Shruti &
Mr. Chetan Kumar Shukla, Advs.
Mr. Anurag Ojha, Sr. Standing
Counsel with Mr. Subham Kumar and
Mr. Dipak Raj, Advs. for Customs.

versus

THE COMMISSIONER OF CUSTOMS & ORS.Respondents

Through:

42

WITH

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W.P.(C) 11034/2024 & CM APPL. 45599/2024

MOHAMMED ABIDPetitioner

Through: Mr. Tarun Gulati, Senior Advocate
with Mr. Puneet Agrawal, Mr. Yuvraj



Singh, Ms. Shruti Garg, Ms. Shruti &
Mr. Chetan Kumar Shukla, Advs.

versus

THE COMMISSIONER OF CUSTOMS & ORS.Respondents

Through: Mr. Anurag Ojha, Sr. Standing
Counsel with Mr. Subham Kumar and
Mr. Dipak Raj, Advs. for R-1 & 5.

43

AND

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W.P.(C) 11087/2024 & CM APPL. 45809/2024

SHIVINDER SINGH

.....Petitioner

Through: Mr. Tarun Gulati, Senior Advocate
with Mr. Puneet Agrawal, Mr. Yuvraj
Singh, Ms. Shruti Garg, Ms. Shruti &
Mr. Chetan Kumar Shukla, Advs.

versus

COMMISSIONER OF CUSTOMS (EXPORTS)
& ORS.

.....Respondents

Through: Mr. Harpreet Singh, Senior Standing
Counsel along with Mr. Jai Ahuja and
Ms. Suhani Mathur, Advs.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE SAURABH BANERJEE

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present writ petitions have been filed under Articles 226 and 227 of the Constitution of India *inter alia* seeking issuance of an appropriate writ for quashing of the impugned Order-in-Original dated 26th March, 2024 and (hereinafter "*impugned Order-in-Original*") the impugned Show Cause Notice dated 20th June, 2012 (hereinafter "*impugned SCN*") issued by the



Respondent No. 1 – Commissioner of Customs, Inland Container Depot (Export), Tughlakabad, New Delhi and Respondent No. 4 – Additional Director General, Directorate of Revenue Intelligence, Delhi Zonal Unit, respectively.

3. The brief facts of the case are that the Directorate of Revenue Intelligence, Delhi Zonal Unit, (hereinafter “*DRI*”), on the basis of intelligence received, suspected misdeclaration and undervaluation in the import of rubber compound, un-vulcanized rubber compound and nylon chords (hereinafter “*subject goods*”) by two entities namely M/s. Y.K. Rubber and M/s Hashmi Imports (P) Ltd. The said entities were believed to be under the actual control of one Mr. Rafique *i.e.* the Petitioner in **W.P.(C) 10758/2024**. During the course of investigation, the DRI suspected that Mr. Rafique was also using other firms. The said entities are Petitioners herein and are captured in the impugned SCN in the following terms:

“7.0 From the investigations conducted so far it appears to have been established that Shri Rafique imported rubber compound in various firms and opened and used other firms opened in the name of his relative and some other firms as per the following details:

- 1. M/s Hashmi Import, Delhi: The proprietor of this firm is Mohammad Abid brother of Shri Rafique. This firm has been extensively used for import of rubber compound by Shri Rafique.*
- 2. M/s Y.K. Rubber, Delhi: The proprietor of this firm is Mohammad Yakub, father of Shri Rafique. This firm has also been used extensively for import of rubber compound.*
- 3. M/s LAXMI Industrial Corporation: The proprietor of this firm is Shri Ashok Goyal.*
- 4. M/s Jai Durga Enterprises. The proprietor of this firm is Shri Rajesh who in his statement*

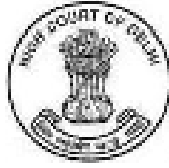


admitted that he had opened the firm on the instruction of Shri Rakesh Mangala

5. M/s Star International: The proprietor of this firm is Shri Dayanand who in his statement admitted to have opened the said firm on the instruction of Rakesh Mangala.”

4. The role ascribed to Mr. Shivinder Singh *i.e.*, the Petitioner in **W.P.(C) 11087/2024** is *inter alia* that he was an associate to Mr. Rafique who procured goods from various suppliers and used to generate fake invoices at under-valued prices by suppressing the actual transaction value and undervaluing the imported goods. The role of Mr. Shivinder Singh is captured in the impugned SCN in the following terms:

“14.4: Shri Shivinder Singh, an associate of Shri Rafique, procured the goods from various suppliers and used to generate fake invoices at under-valued prices by suppressing the actual transaction value and-wilfully undervaluing the imported goods covered under several Bills of Entry, details of which are detailed in Annexures-A-I, A-II.... to Annexure E to this SCN with an intent to evade the Customs duty. Shri Shivinder Singh admittedly had full knowledge about the mis-declaration and under-valuation of the goods at the time of their importation. He was involved in generating fake invoices at the time of their importation. He was involved in generating fake invoices at grossly undervalued value rates and sending differential amount through hawala channel. Shri Shivinder Singh, knowingly & wilfully imported the said goods from by mis-declaring the actual value, as discussed in the foregoing paras. Thus, Shri Shivinder Singh has done various acts of omission & commission, which have rendered the imported goods liable for confiscation under Section 111 (m) of the Customs Act, 1962. Shri Shivinder Singh knowingly and intentionally made,



signed and used and caused to be made, signed or used false declarations, statements and documents viz. creating fake invoices at grossly undervalued rate, while making fraudulent imports with an intention to evade Customs duty. Accordingly, he is liable to be penalized under Section 112 (a) & (b) and Section 114 AA of the Customs Act, 1962.”

5. On the basis of the allegations stated in the impugned SCN, the DRI raised various demands against the Petitioners including interest and penalty. The impugned SCN was however not adjudicated for a substantial period of time by the concerned assessing authority.

6. The Petitioners in the present case are co-noticees of the impugned SCN in the case titled ***Shri Rakesh Kumar Mangala & Anr. v. The Commissioner of Customs Export & Ors. (2025:DHC:1015-DB)***.

7. Vide the said judgment, the same Show Cause Notice dated 20th June, 2012 and the order in original dated 26th March, 2024 has already been quashed in the following terms:

“21. Thus, following the decisions discussed above, the impugned SCN dated 20th June, 2012 deserves to be quashed and is accordingly set aside.

22. Considering that the impugned SCN which forms the basis for passing of the impugned Order-in-Original dated 26th March, 2024 itself has been set aside, the said impugned Order-in-Original cannot be sustained and would not survive in terms of the settled principles of law. Thus, the impugned Order-in-Original also deserves to be quashed and is accordingly set aside.”

8. Thus, in terms of the said judgment, impugned Order-in-Original dated 26th March, 2024 and the impugned Show Cause Notice dated 20th June, 2012



are set aside even qua the present Petitioners.

9. In ***W.P.(C) 10759/2024***, it is submitted that at the time when the impugned show cause notice was issued, the firm was known as Y.K. Rubber, which was a sole proprietary concern of the father of the present Petitioner – Mohammed Abid. At the time when the order in original has been passed, the father of the Petitioner – Mohammed Yakub had already passed away. Accordingly, the benefit of this order shall ensure in favour of Mohammed Abid.

10. Petitions are disposed of in these terms. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

SAURABH BANERJEE
JUDGE

FEBRUARY 24, 2025

Rahul/rks