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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 11394/2025 & CM APPL. 46677/2025**

ZAKIR KHAN .....Petitioner

Through: Mr. Deepak Gandhi, Mr. Riccky Choudhary and Mr. Prateek Bhadana, Advs.

versus

PRINCIPAL COMMISSIONER OF CUSTOMS IMPORT .....Respondent

Through: Mr. Anurag Ojha, SSC with Mr. Dipak Raj, Mr. Shashank Kumar and Mr. Garima Kumar, Advs.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

O R D E R

% 06.08.2025

1. This hearing has been done through hybrid mode.

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2. Allowed, subject to all just exceptions. Accordingly, the application is disposed of.

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3. The present petition has been filed by the Petitioner -Zakir Khan under Articles 226 and 227 of the Constitution of India, *inter alia*, assailing the action undertaken by the Customs Department in carrying out search proceedings at the residential premises of the Petitioner on 10th October, 2021.

4. The Customs Department suspected, on the basis of certain intelligence received, that there was under valuation and misdeclaration of goods by the Petitioner. The Directorate of Revenue Intelligence, Delhi Zonal Unit

(hereinafter, '*DRI*') was also involved in the investigation and the statement of the Petitioner was recorded at the said point in time on 18th October, 2021 under Section 108 of the Customs Act, 1962.

5. The said statement of the Petitioner was subsequently retracted on 28th October, 2021. During the said period, statements of various other co-noticees are also stated to have been recorded under Section 108 of the Customs Act, 1962.

6. Finally, a Show Cause Notice (hereinafter, '*SCN*') dated 12th October, 2023 was issued and notices of personal hearing were issued to the Petitioner.

7. It is the case of the Petitioner that despite repeated representations and various defaults by the Customs Department, no effective hearing has been given to the Petitioner till date. According to the Petitioner, the only hearing which was given was on 7th May, 2025.

8. However, this position is disputed by Mr. Anurag Ojha, ld. SSC for the Respondent and submits that the Order-in-Original has been now passed by the Adjudicating Authority on 1st August, 2025.

9. The prayers in the present writ petition are as under:

"

I. Issue a writ of Mandamus Or Certiorari, Or Any Other Appropriate Writ/Order/Direction, for the Respondent to Grant An Opportunity To Cross-Examine The Co-Noticee(S) And Witnesses Whose Statements Are being relied upon in Annexure P.4, the Show Cause Notice bearing no. 31/2023-/S.J./Pr. Commr./ACC-Import issued under Section 28(4) R/W Section 124 of the Customs Act, 1962 dated 12.10.2023 as sought in the Impugned Interim reply dated 23.09.2024, Reminder dated 02.06.2025 and second Reminder dated 12.06.2025 AND/OR;

II. II. issue a writ of Mandamus Or Certiorari, Or Any Other Appropriate Writ/Order/Direction, for the respondent to *grant an opportunity to cross-examine the officers of income tax authorities and investigating officer, SIO, Shashi Shekhar Prasad as sought in the representation dated 08.07.2025 and/or;*

III. III. issue a writ of Mandamus Or Certiorari, Or Any Other Appropriate Writ/Order/direction, for the Respondent to supply the documents as sought in the interim reply dated 23.09.2024 to the Subject Show Cause Notice bearing no. 31/2023-/S.J./Pr. Commr./ACC-Import issued under section 28(4) R/W Section 124 of the Customs Act, 1962 dated 12.10.2023. And/or;

IV. Pass any other order as this Hon'ble Court deems fit and proper in the facts and circumstances of the case."

10. The challenge primarily, therefore, is to the SCN which was issued by the Respondent. The Petitioner further assails the denial of an opportunity to cross-examine the co-noticees, as well as the failure to furnish the documents sought by the Petitioner.

11. Mr. Deepak Gandhi, ld. Counsel for the Petitioner, at this stage points out that a recent order has been passed by the Lokpal of India dated 24th July, 2025 directing the Central Bureau of Investigation (hereinafter, '*CBI*') to enquire against certain Government servants who are described as RPS-1 to RPS-6, out of which RPS-1 was at the relevant point in time working with the DRI and the remaining were officers of the Customs Department, Kolkata.

12. The said order of Lokpal of India has in effect directed a preliminary enquiry and an investigation by the CBI against all the six officers in the matter. The copy of the order dated 24th July, 2025 of Lokpal of India is taken on record.

13. Insofar as the present case is concerned, it relates merely to the SCN which is challenged, issued by the Customs Department, Delhi. The stand of

the Petitioner is that no effective hearing has been given to the Petitioner and an opportunity of cross-examination has also not been granted. The SCN itself was issued way back in 2023 and from the record it is clear that there are several communications between the Petitioner and the Customs Department.

14. The Order-in-Original is stated to have been passed on 1st August, 2025. The present writ has been filed on 21st July, 2025 but was listed for the first time on 1st August, 2025. It is evident to the Court that the Petitioner may have got wind of the Order-in-Original which was likely to be passed and hence, challenged the SCN and all the proceedings in a belated manner after a period of two years.

15. Since the Order-in-Original itself has been passed, the challenge to the SCN would no longer survive. If the Petitioner is aggrieved by the Order-in-Original dated 1st August, 2025, all remedies of the Petitioner are left open.

16. The grounds which have been raised in the present petition have not been adjudicated by this Court.

17. The petition is disposed of in the above terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J.

SHAIL JAIN, J.

AUGUST 6, 2025
kp/ck