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

\+ **W.P.(C) 13520/2025**

MOHAMMED AFROZ MEMON .....Petitioner

Through: Mr Akhil Krishan Maggu, Mr Vikas Sareen, Ms Oshin Maggu, Ms Maninder Kaur, Mr Aryan Nagpal, Ms. Mehak Sharma, Advs.

versus

DEPUTY COMMISSIONER OF CUSTOMS-REFUND, INLAND CONTAINER DEPOT, TUGHLAKABAD, NEW DELHI & ANR. .....Respondents

Through: Mr. R. Ramachandran, SSC with Mr. Prateek Dhir, Adv.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

<u>O R D E R</u>

% 17.09.2025

1. This hearing has been done through hybrid mode.

<u>CM APPL. 55469/2025 (for Exemption)</u>

2. Allowed, subject to all just exceptions. Application stands disposed of.

<u>W.P.(C) 13520/2025</u>

3. The present petition has been filed by the Petitioner seeking refund of a sum of Rs 7 lacs which was deposited by the Petitioner with the Deputy Commissioner of Customs, Nhava Sheva, Maharastra-400707.

4. The background giving rise to the case is that an investigation was undertaken by the Directorate of Revenue Intelligence, Mumbai Zonal Unit *(hereinafter 'DRI'),* in respect of various shipping bills which were filed between 15th March,2019 to 27th March, 2019. As per the DRI, there was

fraudulent duty drawbacks availed by the entity which was controlled by one Mr. Neeraj Bhanupratap Singh.

5. The allegation against the Petitioner is that the Petitioner used to receive a share of the export benefits from the goods that he used to supply to Mr. Neeraj Bhanupratap Singh and a payment of Rs 20 lacs has been received by him from Mr. Neeraj Bhanupratap Singh during the course of these transactions.

6. It is the case of the Petitioner that on 3rd September, 2021, the Petitioner had deposited a sum of Rs 10 Lacs during the course of investigation. As a proof of the said deposit, the bank statement of M/s Hena Dye Chem which is a proprietorship concern of the Petitioner is relied upon.

7. In furtherance of the investigation, a show cause notice dated 8th March, 2024 *(hereinafter, 'SCN')* was issued to the Petitioner which was challenged before this Court in ***Writ Petition (C)No. 2949/2025***. In the said case, vide order dated 02nd April, 2025 the Petitioner was permitted to file a reply to the SCN and a personal hearing was directed to be fixed. The said order dated 2nd April 2025, in ***Writ Petition (C)No. 2949/2025*** is relevant and set out below:-

> *"2. This petition is filed under Article 226 and 227 of the Constitution of India by the Petitioner - Mohammed Afroz Memon, challenging the impugned show cause notice (hereinafter 'SCN') bearing No. 09/2024 dated 08th March, 2024 on the ground that the same has been issued belatedly and hence, deserves to be quashed and set aside.*
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> *3. The background of the case is that the Directorate of Revenue Intelligence, Mumbai Zonal Unit ('DRI'), had unearthed a large scale syndicate which was operating*

through multiple Importer-Exporter Codes ('IECs') procured by forging 'Know Your Customer'('KYC') documents of third parties. Overvalued goods are alleged to have been exported using these IECs to obtain duty drawback benefits and IGST refund.

4. The main person accused of running the syndicate is one Mr. Neeraj Bhanupratap Singh who is alleged to have acquired control of 56 such IECs.

5. In respect of this investigation, it was also found by DRI that various entities were involved in supplying goods to the said main accused. The DRI had inspected various live consignments and had also conducted a market survey which revealed that ordinary garments were being overpriced only with an intention to avail duty drawbacks. There is a detailed investigation report which was the basis of the SCN which was issued on 08th March, 2024.

6. There are a total of 79 firms who have received the SCN and the Petitioner herein, being the main accused is one of the noticees in the said SCN. An opportunity was given to each of the noticees to file a reply within the stipulated time period. However, it appears that as on date no reply has been filed by the Petitioner. A hearing notice is stated to have been received by the Petitioner on 29th January, 2025 and at this stage, the Petitioner has sought to challenge the present SCN.

7. The submission of ld. Counsel for the Petitioner is that this matter would be covered by the decision of the Gujarat High Court in ***SCA No. 7165/2021*** *titled* ***as M/s Raghav International & Others v. Union of India & Anr.*** *wherein it was held that since the SCN was issued after the expiry of three years, the SCN itself would be liable to be quashed. Ld. Counsel has also relied upon the order of the Supreme Court dated 19th October, 2023* *in **SLP(Civil) 24022/2023** titled as **Union of India & Ors. Versus M/S Raghav International & Anr.** which reads as under:*

> *"Delay in filing the special leave petition is condoned.*
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> *Having heard learned counsel for the petitioners and learned counsel for the respondent(s)-caveator, we find that this special leave petition arises out of Special Civil Application No.7165 of 2021 wherein, the period of assessment was 2011-2015. **<u>In respect of the said period, the dates of issuance of the show cause notices are 16.03.2021, 01.04.2021, 01.04.2021 and 25.05.2021 which means that the show cause notices were issued 6 to 10 years thereafter. There is no explanation whatsoever for the delay in issuance of notices to the respondents-herein.</u>***
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> ***<u>In the circumstances, a challenge made to the show cause notices before the High Court was successful inasmuch as the action of the respondent authority was held to be belated and hit by delay and latches. Consequently, the show cause notices were quashed. We do not think that the impugned order would call for any interference in this case.</u>***
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> *Hence, the special leave petition is dismissed on the basis of delay and latches.*
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> *Pending application(s), if any, shall also stand disposed of."*

8. A perusal of the above order would show that in the said matter, the SCNs were issued after a delay of six to ten years and there was no reasonable explanation for such delay.

9. In the present case, the SCN itself shows the magnitude of the investigation which led to unearthing *of a complete misuse of the duty drawback scheme in collusion with several parties. Such an investigation would reasonably require some time to be concluded. Moreover, the SCN itself is dated 08th March, 2024, i.e. almost a year old, and the Petitioner has sought to approach this Court now.*

10. Under these circumstances, considering that various factual aspects would have to be gone into, the Petitioner may file its reply within a period of 30 days and a date for personal hearing shall be fixed in this matter. After hearing the Petitioner and other similar noticees, the order shall be passed in accordance with law.

11. Further, insofar as the Petitioner is concerned, it is the contention of the Respondent that Rule 16A of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 would not apply as the said rule would only be applicable with respect to the main accused person Mr. Neeraj Bhanupratap Singh. This issue shall also be considered by the Adjudicating Authority.

12. The petition stands disposed of in the above terms. Pending applications, if any, are also disposed of."

8. This order was challenged by the Petitioner before the Supreme Court in ***SLP No. 14692/2025*** and *vide* order dated 29th May, 2025, the said SLP was dismissed as withdrawn. The said order is reads as under:-

" Learned counsel for the petitioner submitted that the petitioner may be permitted to withdraw the Special Leave Petition.
His submission is placed on record.
Special Leave Petition is dismissed as withdrawn. Pending application(s), if any, shall stand disposed of."

9. The Petitioner has thereafter filed the interim reply dated 31st May,

2025 to the SCN and an Order-in-Original dated 30th June, 2025 has been passed by the Adjudicating Authority. In so far as the Petitioner is concerned, the total penalty which has been imposed is as follows:

> *48.6 I impose penalty **Rs. 1,00,000** under section 114 (iii) and Section114AA of the Customs Act, 1962 upon Shri Afroz Memon for their role in the exports through the IBC of Elevaded Enterprises, as discussed in para supra. (page 769)*
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> *54.3 I impose penalty **Rs. 1,00,000** under section 114 (iii) and Section114AA of the Customs Act, 1962 upon Shri Afroz Memon for his role in the exports through the IEC of LAstaz Enterprises, as discussed in para supra. (page 776)*

10. A total penalty of Rs 3 Lacs has been imposed upon the Petitioner in the above Order-in-Original dated 30th June, 2025. The Petitioner's case, therefore, is that the Petitioner does not wish to challenge these penalties and prays for refund of Rs 7 Lacs after deducting Rs 3 Lacs in terms of the penalty raised in the Order-in-Original dated 30th June, 2025. Thus, Mr. Akhil Krishan Maggu, ld. Counsel for the Petitioner submits that the directions may be issued for the said refund.

11. Mr. Ramachandran, ld. SSC on the other hand, firstly submits that the deposit, if any, was made before authorities in Nhava Sheva, Mumbai and not before the Adjudicating Authority in Delhi. Secondly, it is submitted that the amount of Rs 10 lacs was deposited in the name of M/s Harshit Exports which was the other noticee entity run by Mr. Neeraj Bhanupratap Singh.

12. Thus, it is the case of the Department that it is not clear as to whether the deposit is to be credited in favour of the Petitioner or not. On this aspect, the submission of Mr. Maggu, ld. Counsel for Petitioner is that the deposited

amount has been deposited by M/s Hena Dye Chem, the entity of the Petitioner. He has further relied upon the letter dated 3rd September, 2025 issued by Tughlakabad, Inland Container Depot.

13. Heard. The bank statement and the demand draft of Rs 10 Lacs which has been placed on record would not automatically mean that the deposit is on behalf of M/s Hena Dye Chem or the Petitioner as the deposit could have been made on behalf of the third party. Be that as it may, the Tughlakabad, Inland Container Depot has issued a letter on 03rd September, 2025 stating as under:-

> *"**Subject: Refund Application dated 14.08.2025 for an amount of Rs. 7 Lakhs – regarding***
> *Sir,*
> *Kindly refer to your refund application dated 14.08.2025 [received in this office on 18.08.2025] on the subject matter.*
> ***2. In this regard, it has been observed that the amount of Rs. 10,00,000/-, claimed to have been deposited by you, was in favour of Assistant Commissioner of Customs, Nhava Sheva. Therefore, you are requested to file your refund claim in the said office as the same falls under their jurisdiction i.e. Nhava Sheva Port."***

14. Thus, the question that would arise for consideration of this Court is as to which would be the authority where the refund of the deposit made by the Petitioner can be sought.

15. In the opinion of this Court, since the said amount of Rs. 10 Lacs is deposited before DRI, Mumbai Zonal Unit, the Petitioner would have to approach DRI, Mumbai Zonal Unit to seek refund.

16. In so far as the identity of the person who had made the deposit of Rs 10 Lacs is concerned, if the Petitioner approaches the concerned authority, the authority shall look into the matter and after ascertaining as to whether the

deposit was by or on behalf of the Petitioner, or any third party, the refund shall be considered in accordance with law.

17. Needless to add, this Court has not opined on the merits of the matter.

18. In terms of the above, the Petitioner is free to approach the concerned authority in Nhava Sheva, Mumbai for seeking refund of the deposited amount.

19. The present petition stands disposed of in the above terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J.

SHAIL JAIN, J.

SEPTEMBER 17, 2025
sk/ss