IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.914 OF 2025

1. Divine Enerprises,
UG-18, Johari Palace, 51-MG Road,
Near Treasure Island, Indore,
Madhya Pradesh-452001
Proprietor Smt.Manisha Yadav through her
constituted attorney Mr.Suresh Bafna.

2. Suresh Bafna, Age 60 years,
34, Shan Building, Prbhadevi, Dadar (West),
Mumbai-400 028. Petitioners

versus

1. Union of India,
through the Secretary,
Ministry of Finance, Department of Revenue,
North Block, New Delhi-110 001.
2. Office of Commissioner of Customs (NS-V),
Jawaharlal Nehru Custom House,
Nhava Sheva, Taluka Uran, Raigad-400 707. Respondents

Dr.Sujay Kantawala with Mr.Anupam Dighe, Ms.Renita Alex i/by India Law Alliance for Petitioners.

Mr.Subir Kumar with Mr.S.D.Deshpande for Respondents.

CORAM: G. S. KULKARNI & AARTI SATHE, JJ.

DATE: 9th April 2026

P.C.

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. This petition under Article 226 of the Constitution of India prays for the following substantive reliefs :

> "a) That this Hon'ble Court be pleased to issue Writ of Certiorari or Writ in the nature of Certiorari or any other appropriate Writ, Order or Direction calling for records and proceedings and after going into the legality, propriety and validity thereof to quash and set aside :
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> i) The Extension Order dated 30.9.2023 issued under the first proviso to Section 28(9)(b) of the Act;
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> ii) The impugned order dated 7.10.2024 (Exhibit-Q);
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> iii)The SCN dated 9.10.2022 (Exhibit-K) as the Respondent no.2 has failed to conclude the proceedings as stipulated under Section 28(9)(b) of the Act, and therefore, the proceedings is deemed to be concluded as if no notice has been issued as provided in the second proviso to Section 28(9)(b) of the Act;
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> b) That this Hon'ble Court be pleased to issue a Writ of Mandamus or Writ in the nature of Mandamus or any other appropriate Writ, Order or Direction directing the Respondents, their servants, subordinates and agents :
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> i) to withdraw the Extension Order dated 30.9.2023 issued under the first proviso to Section 28(9)(b) of the Act;
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> ii) To withdraw the Impugned Order dated 7.10.2024 (Exhibit-Q);
>
> iii)To withdraw the SCN dated 9.10.2022 (Exhibit-K), as the Respondent no.2 has failed to conclude the proceedings as stipulated under Section 28(9)(b) of the Act, and therefore, the proceeding is deemed to be concluded as if no notice has been issued as provided in the second proviso to Section 28(9)(b) of the Act."

3. The primary grievance of the Petitioners is that the order dated 7th October 2024 (`impugned order'), passed by Respondent no.2, has been passed without giving an opportunity to the Petitioners of being heard, and also without assigning any reasons, and hence the same is contrary to the principles of natural justice and is therefore liable to be set aside.

4. Briefly the facts are as under :

Petitioner no.1 is a proprietorship concern and is, inter alia, engaged in the wholesale trade of small button cells (primary cells) by importing the said cells and selling the same to the retailers. Petitioner no.2 is the constituted attorney of Petitioner no.1, who manages the operations and business of Petitioner no.1. On 25th October 2021, Petitioner no.1 undertook imports of the primary cells from one M/s.New Tech International Creation Limited, Hong Kong, which were put on hold, as it was alleged that the value in respect of the import of primary cells was mis-declared to evade the customs duty. On 9th November 2021 examination of the said primary cells was conducted, wherein it was observed that the declared assessable value of the imported primary cells appeared conspicuously low as per contemporaneous imports. As a consequence of the aforesaid examination, a summons was issued to the proprietor of Petitioner no.1 to produce the relevant documents in respect of the aforesaid imports, and the statement of the proprietor of Petitioner no.1 was recorded, wherein in her statement, the proprietor of Petitioner no.1 has mentioned that Petitioner no.2 was responsible for the firm's business and that she has executed an authorization appointing Petitioner no.2 to appear before the Customs Authorities.

5. On 7th December 2021 and 28th December 2021, the Petitioners sought for provisional release of the primary cells. However, the primary cells were placed under seizure on 30th December 2021, allegedly on the ground that their declared value appeared to be conspicuously low as per contemporaneous imports, and therefore the provisional release was rejected invoking Rule 12 of the Custom Valuation Rules, 2007 (`Rules' for short). Thereafter on 31st December 2021 and 6th January 2022 summons were issued to Petitioner no.2 requesting him to produce documents and in response thereto, the aforesaid documents were submitted. Thereafter, on 26th April 2022 and 8th June 2022, the Respondent no.2

permitted provisional release of the primary cells upon fulfillment of certain conditions. Thereafter, between 26th May 2022 to 31st July 2022, various summons were issued to the proprietor of Petitioner no.1 and to Petitioner no.2 and various details and documents were requested to be submitted, and also it was mentioned therein that the period to show cause was extended in view of non co-operation of the Petitioners in not participating in the adjudication proceedings. On 29th July 2022 and 31st July 2022 the proprietor of Petitioner no.1 and the Petitioner no.2 duly replied to the aforesaid summons and sought for an adjournment. Thereafter on 29th August 2022 the period to issue a show cause notice under Section 124 of the Customs Act, 1962 (`the Act' for short) was extended by a period of further two months under Section 110(2) of the Act, as the investigation was still on-going in the matter of Petitioners.

6. Thereafter, the Petitioners filed Writ Petition No.1814 of 2023 against the provisional release orders of 26th April 2022 and 8th June 2022 before this Court and by an order dated 19th September 2024, this Court disposed of the petition with a direction to the Additional Commissioner of Customs to reconsider the documents submitted by the Petitioners and an opportunity be granted to the Petitioners to explain their case. For ease of reference, the order dated 19th September 2024 passed by the co-ordinate Bench of this Court, is reproduced below :

> "1. Petitioner is basically impugning orders dated 26th April 2022 and 8th June 2022 granting provisional release of the goods subject to complying the conditions mentioned therein.
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> 2. Mr. Nandkishore states that had an opportunity been given by the Officer to explain the documents or the situation, such onerous conditions may not have

been imposed and probably the Officer would have also been satisfied that the value declared by petitioner was the correct value.

3. We have seen that petitioner has disclosed import value of Rs.5,18,828/- and the duty self-assessed is Rs.2,94,405/- as against which in the provisional release order, the value of the goods is taken to be about Rs.2.95 crores and the customs duty is being assessed at Rs.1.60 crores.

4. Mr. Mishra leaves it to the Court while submitting that there is no procedure for giving a personal hearing while passing an order for provisional release. Mr. Mishra also states that two affidavits have been filed to justify how these figures were arrived at.

5. In our view, without going into details as to whether a personal hearing has to be given or otherwise, we still feel that in the facts and circumstances of this particular case, the concerned Officer could have called upon the importer to explain the situation so that the importer could have also presented further evidence to justify the value declared.

6. Therefore, without going into the merits and keeping open rights and contentions and without expressing any views on the contentions raised in the petition or in the affidavit in reply, we dispose the petition with a direction to respondent no.1 to re-consider the documents and give an opportunity to petitioner to explain petitioner's case.

7. We are not setting aside the order but if respondent no.1 feels that the order requires to be reviewed, he may do so in accordance with law.

8. Petition disposed."

7. Post the order passed by this Court dated 19th September 2024, a notice dated 1st October 2024 was issued by Respondent no.2 communicating to the Petitioners that a personal hearing has been scheduled in respect of the show cause notice referred to in the aforesaid notice on 4th October 2024 at 12.30 p.m. Thereafter, on 7th October 2024, without providing a personal hearing to the Petitioners, Respondent No.2 passed the impugned order confirming the re-determined value of the imported goods and sought to recover the differential duty with respect to the imported primary cells as well as past 11 import shipments. Further, redemption fine and penalty was also imposed by way of the impugned order dated 7th October 2024.

8. It is in the backdrop of above facts that the Petitioners being aggrieved by the impugned ex-parte order dated 7th October 2024, have filed the present petition, which we proceed to decide.

9. Heard learned Dr.Sujay Kantawala with Mr.Anupam Dighe and Ms.Renita Alex for the Petitioners and Mr.Subir Kumar with Mr.S.D.Deshpande, learned counsel for the Respondents. It is the contention of Dr.Kantawala appearing for the Petitioners that, the impugned order dated 7th October 2024 passed by Respondent no.2 was passed in violation of the principles of natural justice, inasmuch as no hearing was afforded to the Petitioners prior to the passing of the impugned order. He has further submitted that the notice dated 1st October 2024, which fixed the hearing on 4th October 2024, was received by the Petitioners' office only on 4th October 2024 by way of an e-mail and the Petitioners thereafter informed the office of Respondent no.2 by e-mail that since the hearing notice was received by them on 4th October 2024 itself, they were unable to attend the hearing on the scheduled date. He submitted that in the said mail, a request was also made that a fresh hearing be granted on a subsequent date following the principles of natural justice, and a submission dated 7th October 2024 was submitted in the office of Respondent no.2 contending that the issue involved in the show cause notice, which was under consideration, was purely a case of valuation and there was no mis-declaration of the imports, as alleged. It was further submitted in the said letter that valuation rules have not been followed sequentially as mandated and only National Import Database data had been relied upon selectively for arriving at the revised valuation of the imports, which does not

show past imports made by the Petitioners, and hence the show cause notice itself was wrongly issued and the same was therefore liable to be dropped and set aside. It was further submitted that in the said letter, at the bottom of the letter a handwritten note was submitted, wherein it was written that in spite of request of the Petitioners to be heard on 4th October 2024, no personal hearing was afforded to them and once again a request was made to grant personal hearing to adjudicate the matter. It was also submitted that the said request was not acceded to before passing the impugned order, and that the submissions made by the Petitioners by letter dated 7th October 2024 were also not considered, and no reasons and findings were given in the impugned order, thereby rendering the impugned order as a non speaking and bald order.

10. Learned counsel for the Petitioners next submitted that the impugned order has been passed contrary to the Standing Order No.12/2018, dated 25th April 2018, issued by Respondent no.2 wherein in clause-5 it has been stipulated that where justifiable reasons are there to seek an extension, as noted under second proviso to Section 28(9) of the Act, the file should be put up before the officer authorised to grant such extension at least 30 days prior to time limit of six months or one year, as the case may be (time limits provided for adjudication of cases). Standing Order no.12/2018 under Section 28 of the Act prescribes time limits for adjudication of cases and is marked to all the officers and adjudicating authorities while deciding the show cause notices. It was therefore submitted that the impugned order is liable to be quashed and set aside inasmuch as the same is passed contrary to the aforesaid standing order.

11. Learned counsel for the Petitioner next sought to place reliance on the additional affidavit filed by Petitioner no.2 dated 24th February 2026 to bring on record that in an identical case of import of small primary cells by one Make India Impex, the Bill of Entry dated 4th November 2023 was filed before the JNCH Authority i.e. the same Port and an adjudication order dated 11th December 2024 was passed confirming the differential duty and imposing fine and penalty, which was challenged before the Respondent no.2 i.e. the Commissioner of Customs, Appeals, JNCH, and by way of a well reasoned and speaking order dated 10th March 2025, the appeal filed by Make India Impex was allowed, and the transaction value as declared by Make India Impex has been accepted as the genuine transaction value. It was therefore his submission that in the facts of the present case also, the imports were of primary cells, and from the same supplier from whom Make India Impex had imported the primary cells, and considering that in the case of Make India Impex the Revenue had accepted the transaction value as genuine, the same needs to be applied even in the present case. The relevant paragraphs of the aforesaid affidavit are reproduced below :

> "2. To bring on record of this Hon'ble Court in identical of import of Small Button Cells (Primary Cells) by one Make India Impex, a Bill of Entry dated 04.11.2023 was filed with the JNCH Authorities i.e. the same Port and an adjudication order dated 11.12.2024 was passed confirming the differential duty and imposing fine and penalty which was challenged in appeal before the statutory Appellate Authority i.e. the Commissioner of Customs, Appeals, JNCH and by a well reasoned and speaking order dated 10.3.2025, the appeal filed by Make India Impex has been allowed and the transaction value as declared by Make India Impex has been accepted as the genuine transaction value. The Hon'ble Commissioner (Appeals) was pleased to observe, inter alia, that the rejection of the transaction value by the AA was based on mere suspicion and not supported by cogent evidence. Rule 12 of the CVR 2007 was completely violated in the impugned OIO and hence, the Commissioner (A) was pleased to quash and/or set aside the adjudication order. Hereto annexed and marked as Exhibit-A is a copy of the order passed by the Commissioner (A) JNCH dated 10.3.2025 which has been accepted by the Revenue and the same has attained finality. The value declared by

> Make India Impex of identical goods was the same value as declared by the Petitioners. It is submitted that the other importer Make India Impex declared a value of Rs.0.230 for a pack of 100 pieces. The Petitioners have declared the exact same price for the same goods and such discriminatory treatment meted out is visible. In fact, the JNCH Cutoms have accepted the order in appeal, Exhibit 'A' above and have also granted ground rent/storage charges/detention/demurrage waiver certificate dated 16.2.2026 which is annexed and marked as Exhibit-B hereto.
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> 3. This Hon'ble Court may be pleased to take kind note of the fact that the Order in Appeal refers to several Bills of Entry which are having the same prive of the same goods which shows that this is the normal commercial prevailing price in the international market and Section 14 of the Customs Act, 1962 clearly applied to the facts and circumstances of the present case.
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> 4. In view of the clear-cut evidence placed before this Hon'ble Court, the impugned order-in-original dated 7.10.2024 deserves to be quashed and/or set aside and this Hon'ble Court be please to order and direct the Respondents to issue Detention Certificate for the entire period of illegal detention in the interest of justice. Hereto annexed and marked as Exhibit-C is copy of order dated 5.2.2026 in the case of Santa Monica Farm Produce Pvt.Ltd. Vs. Union of India and others by the Hon'ble Bombay High Court."

12. *Per contra*, Mr.Subir Kumar, learned counsel for the Respondents opposed the reliefs as prayed for in the present petition, and submitted that a hearing notice dated 1st October 2024 was sent to the Petitioners prior to the passing of the impugned order and hence the same was not passed in violation of the principles of natural justice. However, Mr.Subir Kumar was unable to rebut or bring on record any document/material to counter the submission made by the learned counsel for the Petitioners that the hearing notice dated 1st October 2024 was received by the Petitioners only on 4th October 2024, and hence they were unable to attend the hearing.

13. After hearing the learned counsels for the parties, we find much substance in the contentions as raised by the learned counsel for the Petitioners' that the impugned order has been passed without affording a hearing to the Petitioners, inasmuch as the Petitioners received the hearing notice on the same

date when the personal hearing was fixed, i.e. on 4th October 2024. Further, as noted above, since the learned counsel for the Respondents have not brought on record anything to demonstrate that the hearing notice was received by the Petitioners prior to 4th October 2024, we are of the view that the Petitioners' contention needs to be accepted, that they were unable to attend the personal hearing due to non- receipt of hearing notice. Further on perusal of the impugned order, we are of the view that the submissions made by the Petitioners by letter dated 7th October 2024 has also not been taken into consideration, and hence the impugned order suffers from the vice of being a non-speaking order, and is therefore liable to be set aside. Considering the settled position in law that prior to passing any order the aggrieved party is required to be heard and the principles of natural justice have to be followed, we are of the clear opinion that the same has not been done in the facts of the present case. In view of the aforesaid, we deem it appropriate to pass the following order, which will meet the ends of justice.

ORDER

(i) The impugned order dated 7th October 2024 is hereby quashed and set aside;

(ii) The Respondents to issue fresh personal hearing notice to the Petitioners in respect of show cause notice dated 9th October 2022 within a period of two weeks from the date this order is made available the Respondents by the Petitioners;

(iii) The Respondents to grant a personal hearing to the Petitioners within a period of six weeks from the date this order is made available to the Respondents by the Petitioners, and adjudicate the proceedings as *de novo* proceedings and pass a well reasoned and speaking order in accordance with law;

(iv) Rule made absolute in the above term. No costs.

(AARTI SATHE, J.) **(G. S. KULKARNI, J.)**