IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-03-2026

CORAM

THE HON'BLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.12753 of 2025
and
W.M.P. Nos.14322 and 14324 of 2025

M/s.M S Enterprises
Represented by its
Proprietor Mr.M.D.Saravanan,
No.12, Vellala Street, Villivakkam,
Chennai-600 049.

..Petitioner(s)

Vs

1. The Deputy Commissioner of Customs (Group 4), Office of the Commissioner of Customs, Imports, Customs House, No.60, Rajaji Salai, Chennai-600 001.

2. The Commissioner of Customs, Chennai II (Import), Customs House, No.60, Rajaji Salai, Chennai-600 001.

..Respondent(s)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus calling for the records relating to the impugned Order-in-Original No.90878/2022 dated 28.05.2022 passed by the first Respondent and quash the same as the same being arbitrary, illegal and in violation principles of natural justice and direct the second Respondent to remove the alert message on Customs Portal and allow to process the petitioners Import consignments

For Petitioner(s): Ms.N.Asmitha

For Respondent(s): Mr.R.P.Pragadish
Senior Standing Counsel

ORDER

The present writ petition is filed challenging the impugned proceedings dated 28.05.2022 on the short ground that no show cause notice was issued to the petitioner.

2. Since the writ petition is being disposed of on the above limited ground, this Court does not propose to examine the facts in detail except to state that the petitioner is a regular importer having IEC No.0411039717. During October, 2016 to December, 2016, petitioner imported light melting scraps falling under CTH 7204 4900 vide 7 bills of entries detailed below by availing BCD exemption vide Notification No.046/2011-Cus. dated 01.06.2011 (Sl.No.967(I)):

S.No.	BE No.	BE Date
1.	7055193	13.10.2016
2.	7161352	20.10.2016
3.	7447692	15.11.2016
4.	7531249	21.11.2016
5.	7666405	01.12.2016
6.	7874952	19.12.2016
7.	7841834	16.12.2016

Notification No.46 of 2011/Cus dated 2011 extends certain concessions for the imports from Philippines and other countries in terms of ASEAN- Indian Free Trade Agreement (AIFTA).

The above notification is said to have been amended periodically from time to time. Petitioner would submit that the subject import would only fall under Appendix II attracting a concessional rate of BCD at 3%, however, the petitioner's bill of entry is subject to a higher duty, which according to petitioner was on a gross misinterpretation of the notification granting them a benefit of reduced rate.

3. Petitioner would further submit that a pre-notice consultative memo was issued vide File No.TA 11/09 dated 25.06.2018, This ought to have been followed by a show cause notice according to the petitioner, however, the impugned order came to be passed without issuing any show cause notice as contemplated under the Customs Act, 1962. It is submitted that the impugned order is made in gross violation of the Section 28 of the Customs Act, 1962.

4. Learned Senior Standing Counsel for respondent would submit that show cause notice was in fact issued and copy of the notice dated 16.08.2021 was also circulated to the Court as well as to the other side.

5. To a pointed question as to whether this finds mention in the impugned order or whether there is due acknowledgement, learned counsel for respondent was not able to either produce acknowledgement for having served notice dated

16.08.2021 nor was able to point out from the impugned order reference to the above notice dated 16.08.2021. Further, learned counsel for petitioner would submit that all through the impugned order, there is only reference to the consultative memo.

6. In the circumstances, since the respondents are unable to demonstrate that show cause notice has in fact been issued, this Court is inclined to set aside the impugned order and petitioner may treat the impugned order as show cause notice and submit his objections within a period of 4 weeks from the date of receipt of a copy of this order. If any such objection/ reply is filed, the same shall be considered and appropriate orders shall be passed in accordance with law after affording the petitioner and other interested parties a reasonable opportunity of hearing.

7. Accordingly, the impugned order dated 28.05.2022 is set aside and the writ petition stands disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

09-03-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
MKA

To:

1. The Deputy Commissioner of Customs (Group 4),
   Office of the Commissioner of Customs,
   Imports, Customs House,
   No.60, Rajaji Salai, Chennai-600 001.

2. The Commissioner of Customs
   Chennai II (Import), Customs House,
   No.60, Rajaji Salai, Chennai -600 001.

MOHAMMED SHAFFIQ J.

MKA

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