IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 30-03-2026**

CORAM

**THE HON'BLE MR.JUSTICE MOHAMMED SHAFFIQ**

**W.P. No.13388 of 2021**
**and**
**W.M.P. Nos.14238 and 14237 of 2021**

M/s.Kuehne Nagel Pvt., Ltd.
Having office at Floor No.10, Olympia Teknos
Plot No.28, South Phase Dr.Ambedkar Nagar
SIDCO Industrial Estate, Guindy,
Chennai, Tamil Nadu 600 032
and Having its Registered Office at
B-1/1018 Vasant Kunj New Delhi 110 070
Rep. by its Director Mr.Anish Kumar Jha

..Petitioner(s)

Vs

1. Additional Director General
   Directorate of Revenue Intelligence,
   27, G.N(Chetty) Road, T.Nagar,
   Chennai-600 017.

2. Principal Director General,
   Directorate of Revenue Intelligence,
   7th Floor, D Block,
   I.P Bhawan, I.P Estate New Delhi 110 002

3. Central Board of Indirect Taxes and Customs
   Ministry of Finance, Department of Revenue,
   Udyog Bhawan, New Delhi.

4. Commissioner of Customs,
   New Customs House, Panambur,
   Mangalore-575 010

5. Joint / Additional Commissioner of Customs
   (Preventive),
   55-17-3 C-14, 2nd Road, Industrial Estate,
   Auto Nagar, Vijaywada 520 007

6. Union of India,
Through Secretary Ministry of Finance
Department of Revenue, Udyog Bhawan,
New Delhi.

..Respondent(s)

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorari calling for the records of the impugned Notice bearing F. No.DRI /CZU /VIII /26 /33L /2018 and dated 02.03.2021 issued by the Respondent No.1 and to quash the same.

For Petitioner(s): Mr.C.Thiagarajan

For Respondent(s): Mr.Rajnish Pathiyil
Senior Standing Counsel (for R1 to R3)

Mr.K.Umesh Rao
Senior Standing Counsel (for R4 to R6)

**ORDER**

The present writ petition is filed challenging the show cause notice dated 22.03.2021 initially on the premise that the DRI may not have the power to adjudicate, however, the same stands resolved by the decision of the Supreme Court in ***M/s.Canon India Private Limited vs. Commissioner of Customs, C.A.No.1827 of 2018 dated 09.03.2021***. Therefore, the learned counsel for petitioner does not press the above aspect.

2. Learned counsel for petitioner would submit that while the DRI may have the jurisdiction, nevertheless, he would submit that the show cause notice is bad for want of jurisdiction and therefore would want this Court to interfere at

the stage of show cause notice.



3. Learned counsel for petitioner would further submit that the petitioner is a Company registered under the provisions of Companies Act, engaged in the business of rendering freight forwarding services. Petitioner would submit that the above services would fall within the meaning of eligible services for the purpose of SEIS scheme. While so, petitioner submitted an application for grant of duty credit scrip for eligible services rendered during the period 2015-16. In view of the fact that the petitioner was rendering eligible services under SEIS scheme a scrip was also granted to the petitioner to enable the petitioner to import availing certain concessions. Petitioner imported certain goods using the above scrip. This notice has now been issued under Section 28AAA which provides for recovery of duties in certain cases which *inter-alia* includes a case wherein an instrument has been obtained by means of collusion, wilful mis-statement or suppression of facts.

4. Petitioner would also also submit that the DGFT Authorities had initiated proceedings to invalidate the scrips issued under SEIS scheme according to the petitioner on similar, if not identical grounds. An order-in-original came to be passed by the DGFT authorities dated 08.10.2024 wherein a penalty of Rs.6,00,000/-, was imposed under Section 11(3) of the Foreign Trade Development and Regulation Act, apart from levy of interest. Petitioner would

further submit that the impugned notice may be bad for want of jurisdiction for two reasons:

i) In view of the fact that authorities under the DGFT has already decided the matter, any proceedings under Section 28 AAA of the Customs Act, 1962, must be consistent with the above order of DGFT.

ii) That apart, he would also place reliance upon a Circular of the Ministry of Finance dated 01.06.2012, wherein the manner in which the adjudication ought to be made under Section 28AAA of the Act, has been clarified. The relevant portion of the order reads as under:

> ***"II.2 Recovery of duty in case of instrument issued under Foreign Trade (Development and Regulation) Act:***
>
> *Section 28AAA has been inserted in the Customs Act through Section 122 of the Finance Act, 2012 to provide for recovery of duties from the person to whom an instrument such as credit duty scrips was issued where such instrument was obtained be means of collusion or willful misstatement or suppression of facts. Since the provision now has the force of law, action for recovery of duty can be initiated under the said provision. Field formation are advised to issue demands as soon as DGFT/ concerned regional Authority initiates action for cancellation of an instrument but the matter may be decided only after the instrument has been cancelled by DGFT."*

5. Learned counsel for respondents would submit that proceedings under Section 28AAA of Customs Act and by DGFT are under different enactments and may not overlap as submitted.

6. This Court is not inclined to go into the merit of the above submission inasmuch as the challenge in the case on hand is only to the show cause notice. This Court is of the view that this is not a case of inherent lack of jurisdiction for this Court to interfere. It is trite that Courts would be loathe in interfering at the stage of show cause notice. In this regard, it may be relevant to refer to the following judgments:

***i) Union of India v. Hindalco Industries, reported in (2003) 5 SCC 194:***

"12. *There can be no doubt that in matters of taxation, it is inappropriate for the High Court to interfere in exercise of jurisdiction under Article 226 of the Constitution either at the stage of the show-cause notice or at the stage of assessment where alternative remedy by way of filing a reply or appeal. ...*"

***ii) State of U.P. v. Anil Kumar Ramesh Chandra Glass Works, reported in (2005) 11 SCC 451 :***

*"6. ...In any event, this Court had repeatedly held that Article 226 should not be permitted to be invoked in order to challenge show-cause notices. ..."*

***iii) Union of India v. Kunisetty Satyanarayana, reported in (2006) 12 SCC 28 :***

*"15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet."*

***iv) <u>Special Director v. Mohd. Ghulam Ghouse, reported in (2004) 3 SCC 440 :</u>***

*"5.This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show-cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court. ..."*

7. It may also be relevant to refer to the judgment of the Supreme Court in the case of ***CIT v. Vijaybhai N. Chandrani,*** reported in ***(2013) 14 SCC 661*** wherein while dealing with the challenge to the High Court rejecting the writ petition filed against the show cause notice it was observed as under:

*"14. .....In the present case, the assessee has invoked the writ jurisdiction of the High Court at the first instance without first exhausting the alternate remedies provided under the Act. In our*

*considered opinion, at the said stage of proceedings, the High Court ought not have entertained the writ petition and instead should have directed the assessee to file reply to the said notices and upon receipt of a decision from the assessing authority, if for any reason it is aggrieved by the said decision, to question the same before the forum provided under the Act."*

8. Therefore, it is open to the petitioner to place reliance upon the orders of DGFT authorities and the Circulars available before the respondents. If any such documents are relied upon by the petitioner, the same shall be considered and appropriate orders shall be passed by the respondents in accordance with law, after affording a reasonable opportunity of hearing to the petitioner.

9. Accordingly, the writ petition stands disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

**30-03-2026**

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

To:

1.Additional Director General
Directorate of Revenue Intelligence,
27, G.N(Chetty) Road, T.Nagar,
Chennai-600 017.

2.Principal Director General,
Directorate of Revenue Intelligence,
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Through Secretary Ministry of Finance,
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New Delhi.

**MOHAMMED SHAFFIQ J.**

MKA

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