IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-04-2026

CORAM

THE HON'BLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.21787 of 2024
and
W.M.P. Nos.23771 and 23773 of 2024

M/s.Mahaveer NX
137/IAI, Kosappur Road,
Theeyampakkam, Madhavaram,
Chennai-600 060.

..Petitioner(s)

Vs

The Chief Commissioner of Customs (In-Situ)
Chennai III (Preventive) Customs
Commissionerate Custom 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 Certiorari calling for the records connected with order in original No 107951 of 2024 dated 25.06.2024 passed by the respondent herein and quash the same for having been passed without jurisdiction, contrary to law and in gross violation to the principles of natural justice.

For Petitioner(s): Mr.N.Viswanathan

For Respondent(s): Mr.Sai Srujan Tayi
Senior Panel Counsel

ORDER

The present writ petition is filed challenging the impugned order dated 25.06.2024 on the short ground that the impugned proceedings are barred by limitation in terms of Section 28(4) of the Customs Act, 1962.

2. This is the second round of litigation. In the earlier round of litigation, there was a challenge to the order-in-original No.105211 of 2024 dated 22.04.2024 wherein the primary ground of challenge was on the ground that there was no valid service as contemplated under Section 153 of the Customs Act. This Court had set aside the impugned order and remanded the matter back to the respondents for reconsideration while also directing the respondents to provide a copy of the show cause notice to the petitioner within a week from the date of receipt of a copy of the said order. Petitioner was also permitted to file a reply and respondents were directed to pass an order in accordance with law. Pursuant thereto, petitioner filed a reply on 20.05.2024, a personal hearing was granted on 21.06.2024 and the impugned order came to be passed on 25.06.2024.

3. This Court is only inclined to look at the issue of limitation, therefore, it may not be necessary to deal with the facts in great detail except to state that the petitioner was engaged in the import and trading of decorative balloons. Petitioner imported 28 consignments from Malaysia through Port of Chennai.

All the Bills related to the period 06.03.2018 to 09.09.2019. Petitioner would submit that it is liable to be classified under the Head CTH 4016 9590, while the respondent Department was of the view that instead it was liable to be classified under the Head CTH 9503 0090. Show cause notice is dated 01.03.2023. Two copies of the said notices have been produced before this Court. While it is submitted that the show cause notice dated 01.03.2023 was issued on the very same day via Speed Post, however, to a pointed question if there is any material evidence to show that it was in fact despatched on 01.03.2023, learned Senior Standing Counsel was not able to produce any material. The very same show cause notice was despatched to the petitioner on 24.04.2024 and received by the petitioner on 25.04.2024. There is no dispute on the above dates. The instructions from the Revenue also contains an Annexure working out a five year period under Section 28(4) of the Act. The same is extracted below:

37.

5 YEAR PERIOD WORKINGS

S. No.	Date	5 years u/s. 28(4)
1.	06.03.2018	05.03.2023
2.	06.04.2018	05.04.2023
3.	17.04.2018	16.04.2023
4.	07.05.2018	06.05.2023
5.	25.05.2018	24.05.2023
6.	25.05.2018	24.05.2023
7.	08.06.2018	07.06.2023
8.	05.07.2018	04.07.2023
9.	01.08.2018	31.07.2023
10.	10.08.2018	09.08.2023
11.	16.08.2018	15.08.2023
12.	03.09.2018	02.09.2023
13.	14.09.2018	13.09.2023
14.	04.10.2018	03.10.2023
15.	22.10.2018	21.10.2023
16.	01.11.2018	31.10.2023
17.	08.11.2018	07.11.2023
18.	06.12.2018	05.12.2023
19.	31.12.2018	30.12.2023
20.	17.01.2019	16.01.2024
21.	28.02.2019	27.02.2024
22.	05.04.2019	04.04.2024
23.	29.04.2019	28.04.2024
24.	23.05.2019	22.05.2024
25.	01.07.2019	30.06.2024
26.	01.08.2019	30.07.2024
27.	09.09.2019	08.09.2024

4. This Court finds that inasmuch as out of the 27 bills of entries, 22 bills of entries are barred by the five year period prescribed under Section 28(4) of the Act if one reckon extended period from 24.04.2024, the same would be bad for want of jurisdiction. In respect of limitation of the remaining five bills of entries, it prima facie appears to be within the extended period provided under Section 28(4) of the Act. However the further question as to whether it is a case which warrants invoking the extended period is a mixed question of fact and law and therefore this Court is not inclined to go into the above aspect.

5. The next question that arises is whether this Court can dissect an order on the ground that a portion is without jurisdiction inasmuch as it is apparent on the face of record that 22 out of 27 bills of entry are barred by limitation even assuming the revenue is being right in invoking the extended period of limitation. In this regard, it may be useful to refer to the judgment of the Supreme Court in the case of ***Union of India (UOI) vs. Hindalco Industries*** reported in ***(2003) 5 SCC 194***, wherein it was held as under:

> *"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. ...*
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> *13. The second contention urged by Mr. T.L.V. Iyer is that*

under Section 11-A, the authority did have power and the High Court had itself found in regard to paragraphs (1) to (13) and directed inquiry in respect of the clandestine removal of the goods. The assessee could have been directed to file a reply in regard to the matters concerning the incorrect valuation and the High Court ought not to have interfered. We are unable to accept the contention of the learned counsel for reasons more than one. First, as submitted by Mr. K.K. Venugopal, if an authority which has jurisdiction in regard to one aspect takes upon itself to make enquiry into a matter in respect of which it had no jurisdiction then merely because in regard to one aspect it has jurisdiction, the court cannot ignore the fact of lack of jurisdiction and allow the Tribunal to proceed with the matter in respect of which it has no jurisdiction to make inquiry."

(emphasis supplied)

6. Thus an order which lack jurisdiction in respect of a portion or certain aspects, it may be permissible to dissect the order and interfere with that portion which is lacking jurisdiction.

7. It is made clear that this Court has invoked its jurisdiction under Article 226 of Constitution of India, only in view of the fact that the respondent were not able to demonstrate that there has not been any valid service of the notice dated 01.03.2023 with supporting materials prior to its despatch on 24.04.2024 and receipt on 25.04.2024. To repeat, despite a specific query, no material has been placed before this Court to demonstrate that the notice dated

01.03.2023 was in fact despatched on 01.03.2023 except for assertion by the learned Senior Standing Counsel.

8. In that view of the matter, this Court is inclined to set aside the impugned order in respect of the 22 Bills of Entries, in respect of the remaining Bills of Entries viz., Bill of Entry Nos.3027063, 3353512, 3878613, 4316690 and 4828774, petitioner shall work out their remedy in the manner known to law. If any appeal is filed by the petitioner, while admitting the appeal, the appellate authority shall exclude the time spent in prosecuting the present writ petition.

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

02-04-2026

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

To:
The Chief Commissioner of Customs (In-Situ)
Chennai III (Preventive) Customs
Commissionerate Custom House,
No.60, Rajaji Salai, Chennai-600 001.

MOHAMMED SHAFFIQ J.

MKA

W.P. No.21787 of 2024

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