IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 06.01.2026
Coram
The Honourable **Mr.Justice Abdul Quddhose**

W.P.No.36319 of 2023
and
W.M.P.No.36299 of 2023

M/s. Vee Kay Logistics
rep. By its Partner, Mr.J.Mathew. ...Petitioner

Vs.

1. The Commissioner of Customs (Appeals-II)
Custom House, No.60, Rajaji Salai,
Chennai – 600 001.

2. The Joint Commissioner of Customs (Group-2)
Custom House, No.60,
Rajaji Salai, Chennai – 600 001. ...Respondents

Prayer

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records pertaining to the impugned order-in-appeal Seaport C.Cus.IINo.754/2023 dated 10.11.2023 issued by the first respondent and to quash the same.

For Petitioner : Mr.R.Sethu Prabakaran
For Respondents : Mr.G.Meganathan
Junior Standing Counsel

Order

This Writ Petition has been filed challenging the Order-in-Appeal dated 10.11.2023 passed by the first respondent, under which, the first respondent, Commissioner of Customs (Appeals-II) disposed of the Appeal by reducing the penalty imposed on the petitioner vide Order-in-Original dated 03.08.2021 passed by the second respondent, viz., the Original Adjudicating Authority as per the provisions of the Customs Act, 1962 from Rs.10,00,000/- to Rs.9,00,000/-.

2. The petitioner has challenged the Order-in-Appeal dated 10.11.2023 on the ground of violation of principles of natural justice.

3. A counter affidavit has been filed by the respondents reiterating the contents of the impugned Order-in-Appeal. However, it is an admitted fact that, prior to the passing of the Order-in-Original by the Original Adjudicating Authority, no show cause notice was issued to the petitioner and no personal hearing opportunity was afforded to the petitioner. The petitioner was a Customs House Agent. The petitioner claims that only based on the documents furnished by their client, viz., the importer, the petitioner had furnished the same to the Customs Department. The petitioner also categorically contends that the Phytosanitary Certificate submitted by their importer was a genuine one to their knowledge. Therefore, the petitioner contends that they cannot be penalized by the Customs Department as per the provisions of the Customs Act, 1962.

4. On the other hand, as seen from the counter affidavit filed by the respondents as well as from the submissions made by the learned Junior Standing Counsel for the respondents, the petitioner's remedy, if aggrieved by the impugned order, is only to file a further Appeal before the Customs Excise and Service Tax Appellate Tribunal (CESTAT) and therefore, this Writ Petition is not maintainable. According to the respondents, since it is established by the Customs Department that the petitioner, in connivance with the importer, has played fraud upon the Customs Authority for the purpose of release of the goods by furnishing fabricated documents, no relief can be granted in favour of the petitioner by this Court.

5. It is settled law that a show cause notice has to be issued to any party under the Customs Act before the said party is penalized as per the provisions of the Customs Act. It is also settled law that a personal hearing opportunity will have to be afforded to the party, against whom, penalty is proposed to be imposed as per the provisions of the Customs Act.

6. In the instant case, it is an admitted fact that the Original Adjudicating Authority, before passing the adverse orders against the petitioner imposing penalty on the petitioner, has not issued any show cause notice and has also not afforded personal hearing opportunity to the petitioner as per the Circular issued by the Customs Department, i.e. a minimum of three personal hearing opportunities ought to have been afforded to the petitioner before passing any adverse orders.

7. In the case on hand, the petitioner never received any show cause notice and they were also not afforded any personal hearing opportunity by the Original Adjudicating Authority. The importer, for whom, the petitioner had acted as a Custom House Agent might have received the show cause notice and might have been afforded personal hearing opportunities but that would not be sufficient for the purpose of following the due procedure established under law insofar as the petitioner is concerned. Since show cause notice was not issued to the petitioner and personal hearing opportunities were not afforded to the petitioner before passing the Order-in-Original as against the petitioner, this Court is of the considered view that principles of natural justice have been violated by the respondents since they have not followed the due procedure established under law as per the provisions of the Customs Act and also the various decisions rendered by this Court.

8. Though the learned Standing Counsel for the respondents would submit that the petitioner was afforded sufficient opportunities by the first respondent (Appellate Authority) that would not suffice for the purpose of satisfying the statutory requirements as per the provisions of the Customs Act, which makes it mandatory for the Original Adjudicating Authority to afford personal hearing opportunity to the petitioner as well as to decide the issue only after issuing show cause notice to the petitioner by giving an opportunity to the petitioner to raise all objections in the said show cause notice.

9. Since the due procedure established under law has not been followed by the Original Adjudicating Authority, the Order-in-Original dated 03.08.2021 passed by the second respondent, which has got merged with the Order-in-Appeal dated 10.11.2023 passed by the first respondent, which is challenged in this Writ Petition have got to be quashed and the matter has to be remanded back to the Original Adjudicating Authority for fresh consideration by following the due procedure established under law as per the provisions of the Customs Act and by adhering to the principles of natural justice.

10. As stated supra, since principles of natural justice have been violated by the respondents, the impugned Order-in-Appeal dated 10.11.2023 passed by the first respondent as well as the Order-in-Original dated 03.08.2021 passed by the second respondent are hereby quashed only with regard to the petitioner alone and the matter is remanded back to the Original Adjudicating Authority, viz., the second respondent for fresh consideration on merits and in accordance with law. The original Adjudicating Authority is granted liberty to initiate fresh action against the petitioner by issuing a show cause notice and by following the due procedure established under law and pass final orders thereafter. It is made clear that the Order-in-Original dated 03.08.2021 is quashed insofar as the petitioner alone is concerned. So far as the penalty imposed on the importer is concerned, the same is not disturbed by this Court.

11. With the aforesaid direction, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

06.01.2026

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Index : yes/no
Neutral Citation : yes/no
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Abdul Quddhose,J.,

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