BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 08.04.2026

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THE HONOURABLE MR JUSTICE D.BHARATHA CHAKRAVARTHY

W.P(MD)No.9876 of 2026
and
W.M.P(MD)Nos.7811 and 7814 of 2026

Mohamed Bilal ... Petitioner

Vs.

Additional Commissioner of Customs(Preventive)
Office of Commissioner of Customs
No.1, Williams Road, Cantonment,
Tiruchirappalli-620 00 ...Respondent

Writ Petitions are filed under article 226 of the Constitution of India, praying to issue a Writ of Ceriorarified Mandamus, to call for the records on the file of the respondent in connection with the impugned order in Original No.TCP-CUS-PRV-ADC-03/2026 dated 03.02.2026 in File No.GEN/ADJ/164/2024-ADJN and quash the same as illegal and arbitrary and consequently, direct the respondent to give an opportunity of being heard to the petitioner and by affording cross-examination of the co-notice Shahul Hameed.

For Petitioner :Mr.A.Ganesh

For Respondent :Mr.R.Gowrishankar
Standing Counsel

ORDER

This writ petition is filed challenging the impugned order dated 03.02.2026, which is an order in original passed by the respondent as per Section 138-B of the Customs Act.

2.By the said order, as against five persons including the petitioner, the penalty is imposed and the gold is also ordered to be confiscated.

3.When the matter came up for admission, it is pointed out by the learned counsel appearing on behalf of the respondent authority that there is an appeal as per Section 128A of the Customs Act, as against the order in original.

4.The learned counsel appearing on behalf of the petitioner would reply by stating that the impugned order is challenged on the ground of non compliance of principles of natural justice. The learned counsel would submit that on a perusal of the order, it can be seen that the statement of Shahul Hameed is very much relied upon for imposing the liability on the petitioner. In this regard, when show cause notice was issued on 20.08.2024, from the earliest reply submitted to the showcase notice, the petitioner has been praying to cross-examine the said Shahul Hameed. The opportunity to cross-examine is not granted. The learned counsel would rely upon the following judgments in support of his submissions:

(i)In ***Sri Balaganesan Spinners Vs.Jt.Commissioner of Customs, Tuticorin*** reported in ***2021(377)E.L.T.510(Mad.)***

(ii)***Andaman Timber Industries Vs. Commissioner of C.Ex., Kolkata-II***, reported in ***2015(324) E.L.T.641(S.C)***

(iii)In ***Veetrag Enterprises Vs. Commr. Of Cus. (Seaport Exports), Chennai***, reported in ***2015(330) E.L.T.74(Mad.)***

(iv)In ***ICDS LIMITED Vs. Commissioner of Income Tax and another*** reported in ***(2020) 10 SCC 529***.

(v)In ***Ayaaubkhan Noorkhan Pathan Vs. The State of Maharashtra & Ors.,*** in ***Civil Appeal NO.7728 of 2012***.

5.It is his case that when the statement of the said individual is very much essential and it is relied upon by the respondent, the same cannot be done without cross-examination of the witness. Therefore, this Court should interfere with the order in original and set aside the same and remand the matter back to the file of the respondent, by directing the respondent to grant an opportunity of cross examination to the petitioner.

6.I have considered the rival submissions made on either side and perused the material records of the case.

7.It can be seen that the prayer for cross examination is made against one Shahul Hameed who is also a co-delinquent and by the very same impugned order investigation is ordered against the said person and penalty is also imposed against the said person. Therefore, there is no question of compelling the said Shahul Hameed to be a witness in the instant case and to give an opportunity to the petitioner to cross examination. Therefore, I cannot conclude that there is any violation of principles of natural justice. As far as the argument that how far the statement of the said Shahul Hameed can be relied upon so as to mulct the liability on the petitioner and whether the department is relying solely on the evidence of the Shahul Hameed or whether there are other evidence on record or all mixed questions of facts and law to be raised before the Appellate Authority. This Court, in ***Rohan Overseas versus Commissioner of Customs, 2018(2) CWC 588,*** has already held that such mixed questions of fact and law, are not questions of principles of natural justice, purely and simple should be raised only in the appeal to be filed as against the order in original.

8.In view thereof, I am unable to accept the intention of the learned counsel for the petitioner that this Court should entertain the writ petition without relegating the petitioner to the alternative remedy. Therefore, keeping open the liberty of the petitioner to file an appeal as against the impugned order, the writ petition is not entertained. The registry is directed to return the original order to the learned counsel for the petitioner, so as to enable him to file an appeal. At this juncture, the learned counsel would submit that for filing an appeal afresh, the petitioner has to deposit 7 ½ % and the balance of 22 ½ % have also been deposited. The petitioner is facing grave financial circumstances, he requires 3 monthly installments for depositing the said 7 ½ % afresh at the time of filing of the appeal.

9.In view thereof, the said remitted relief can be granted to the petitioner, the petitioner within two weeks from the date of receipt of the web copy of the order. The petitioner shall file an appeal by depositing 2 ½ % of the penalty amount and the balance 5% can be deposited in 2 equal monthly installment and the balance 20% shall be deposited thereafter in the manner known to law. Without insisting on the deposit of entire sum of 2.5%, the appeal shall be taken on file in the meanwhile.

10.With the above observations and directions, this Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

08.04.2026

NCC:Yes/No
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To
Additional Commissioner of Customs(Preventive)
Office of Commissioner of Customs
No.1, Williams Road, Cantonment,
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D.BHARATHA CHAKRAVARTHY, J.

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