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WPC.No.46801/24

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

TUESDAY, THE 24TH DAY OF JUNE 2025 / 3RD ASHADHA, 1947

WP(C) NO.46801 OF 2024

PETITIONER:

M/S. PREMIER MARINE FOODS,
FIRST FLOOR, NIZAM MANZIL, VANDANAM P.O,
ALAPPUZHA, KERALA, REPRESENTED BY M.NIHAS,
MANAGING PARTNER, PIN - 688 001.

BY ADVS.
SHRI.JAZIL DEV FERDINANTO
SRI.JOSE JACOB
SMT.SREELEKSHMI BEN
SMT.ANNE MARIA MATHEW

RESPONDENTS:

- 1 UNION OF INDIA,
REPRESENTED BY SECRETARY, MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE, NORTH BLOCK, NEW DELHI,
PIN - 110 001.
- 2 DEPUTY COMMISSIONER (DRAWBACK),
OFFICE OF THE COMMISSIONER OF CUSTOMS, CUSTOM
HOUSE, WILLINGDON ISLAND, COCHIN, PIN - 682 009.
- 3 ASSISTANT COMMISSIONER OF CUSTOMS (REVENUE
RECOVERY CELL),
OFFICE OF THE COMMISSIONER OF CUSTOMS, CUSTOMS
HOUSE, WILLINGDON ISLAND, COCHIN, PIN - 682 009.



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4 *SUPERINTENDENT (BRC),
OFFICE OF THE COMMISSIONER OF CUSTOMS, CUSTOMS
HOUSE, WILLINGDON ISLAND, COCHIN, PIN - 682 009.*

BY ADV SHRI.P.R.SREEJITH, SC, GSTN

*THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 24.06.2025, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:*



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JUDGMENT

The petitioner, which is a partnership firm engaged in import and export, has approached this Court being aggrieved by Ext.P2 Order in Original issued under Section 28 of the Customs Act, 1962. The facts that led to the filing of this writ petition are as follows:

The petitioner had made exports against 397 shipping bills during the period from 01.01.2020 till 30.06.2022. Out of the said shipping bills, there were short realization in respect of 22 bills to an extent more than 12.5% of the FOB value and therefore, Ext.P1 notice was issued by the 2nd respondent under Rule 18 of the Customs and Central Excise Duty Drawback Rules, 2017, proposing to recover the availed duty drawback in proportion to the sale proceeds not realized/short realized. As per Ext.P1, the petitioner was granted 30 days time to submit their objection to the proposal. The same was finalized as per Ext.P2 Order in Original, for the reason that the petitioner failed to respond the same. Accordingly, in Ext.P2 order, a demand of Rs.1,32,08,280/- was confirmed against the petitioner. As against



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Ext.P2 the petitioner submitted Ext.P3 rectification application under Section 154 of the Customs Act. Without considering the rectification application, Ext.P4 demand letter was issued for the aforesaid amount. This writ petition is submitted in such circumstances.

2. A statement and an additional statement were submitted by the respondents 2 to 4. In the additional statement, they have specifically stated that, in the notice issued to the petitioner, they were informed to submit a written request for personal hearing, if they so desire. However, the petitioner failed to respond to the notice or request for a personal hearing. Ext.P2 order was passed in such circumstances, confirming the original proposal.

3. I have heard Sri.Jose Jacob, learned counsel for the petitioner and Sri.P.R.Sreejith, learned standing counsel for the official respondents.

4. The main contention raised by the learned counsel for the petitioner is that, Ext.P2 is not legally sustainable in view of the fact that the statutory requirement of personal hearing was not provided to the petitioner as contemplated under Section



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28(8) of the Customs Act, 1962. On the other hand, the learned standing counsel for the respondents pointed out that, as per Section 122A of the Customs Act, the adjudicating authority may grant an opportunity of being heard to a party in a proceedings, if the party so desires. In this case, even though such an opportunity was extended to the petitioner, the petitioner did not intimate the 2nd respondent with regard to the requirement of a personal hearing. Therefore, Ext.P2 and the circumstances under which the same was passed, are justified, contends the learned Standing Counsel.

5. After carefully going through the statutory provisions, I find merit in the submission made by the learned counsel for the petitioner. As far as Section 28 is concerned, it specifically deals with adjudication of the demands relating to the duties not levied or short paid. Sub Section 8 of Section 28 specifically contemplates that the proper officer shall, after allowing the concerned person an opportunity of being heard and after considering the representation, if any, made by such person, determine the amount of duty or interest due from such person not being in excess of the amount specified in the notice. Thus,



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it is evident that, as far as personal hearing is concerned, it is made mandatory as per the aforesaid provision. Since this is a special provision deals with the issue on hand, the reliance placed by the learned Standing Counsel upon Section 122A, which is a general provision, cannot be made applicable to the facts of this case. This would lead to the conclusion that, as far as the proceedings which culminated in Ext.P2 order is concerned, an opportunity for personal hearing should have been granted in the light of the statutory stipulations contained in Sub-Section 8 of Section 28. On going through Ext.P1 notice (full set of the said notice was made available by the learned standing counsel) reveals that, apart from requiring the petitioner to submit evidence of realization of the export proceeds within 30 days and also intimating that if the exporter desires to be heard, they may request for the same in writing, no specific date was fixed for personal hearing. Thus, the 2nd respondent had only extended an option to the petitioner to avail an opportunity for personal hearing, if they desire. As mentioned above, in the light of the statutory stipulation contained in Section 28(8), it is not sufficient and it was



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obligatory on the part of the 2nd respondent to intimate the petitioner about specific date on which the petitioner was supposed to appear for personal hearing. Since such course has not been adopted in this case, Ext.P2 order cannot be treated as the one that is in tune with the statutory requirements.

In such circumstances, this writ petition is disposed of quashing Ext.P2 and consequential notices, with a direction to the 2nd respondent to re-consider the matter, after giving the petitioner an opportunity for being heard. This shall be done within a period of two months from the date of receipt of a copy of this judgment.

Sd/-

ZIYAD RAHMAN A.A.

JUDGE

DG/24.6.25



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APPENDIX OF WP(C) 46801/2024

PETITIONER EXHIBITS

<i>Exhibit P1</i>	TRUE COPY OF THE NOTICE NO. 11/2023 DATED 21.09.2023
<i>Exhibit P2</i>	TRUE COPY OF THE ORDER-IN-ORIGINAL NO. 06/2024 (DBK-BRC) DATED 08.01.2024
<i>Exhibit P3</i>	TRUE COPY OF THE ROM APPLICATION DATED 03.07.2024
<i>Exhibit P4</i>	TRUE COPY OF THE DEMAND NOTICE DATED 29.08.2024 ISSUED BY RESPONDENT NO.3
<i>Exhibit P5</i>	TRUE COPY OF THE LETTER DATED 06.09.2024 SUBMITTED BY THE PETITIONER
<i>Exhibit P6</i>	TRUE COPY OF THE NOTICE DATED 30.09.2024 ISSUED BY RESPONDENT NO.4
<i>Exhibit P7</i>	TRUE COPY OF THE DETENTION NOTICE DATED 07.10.2024
<i>Exhibit P8</i>	TRUE COPY OF THE RELEVANT BANK REALISATION CERTIFICATES (BRCS)
<i>Exhibit P9</i>	TRUE COPY OF THE CIRCULAR NO. 33/2019- CUSTOMS DATED 19.09.2019