IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19-08-2026

CORAM

THE HONOURABLE MR.JUSTICE HEMANT CHANDANGOUDAR

WP No. 11926 of 2026
and
WMP Nos. 13012 & 13013 of 2026

M/s.S.M.Apparels Private Limited
Having its Registered Office at No.16, Vellaiyan Street, Kotturpuram, Chennai-600 085 .
Represented by its Director, Mr.Vijay Madhav Pai

Petitioner(s)

Vs

1. The Principal Commissioner of Customs (Air Cargo) Chennai-VII, Commissionerate New Customs, Houses, Air Cargo Complex, Meenambakkam, Chennai-600 027

2.The Deputy Commissioner of Customs (Drawback-AIR) Chennai-VII, Commissionerate New Customs, Houses, Air Cargo Complex, Meenambakkam, Chennai-600 027

Respondent(s)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, to call for the records in and connected with the Order-in-Original No.1069/2022-AIR dated 30.11.2022 passed by the 2nd Respondent, quash the same as being arbitrary and time barred besides passed in violation of the principles of natural justice.

For Petitioner(s): Mr.B.Satish Sundar

For Respondent(s): Mr.K.S.Ramasamy
Senior Standing Counsel

ORDER

The petitioner challenges the impugned order dated 30.11.2022 passed by the 2nd respondent, whereby a sum of Rs.4,99,69,796/- has been ordered to be recovered from the petitioner towards drawback availed by it.

2. The petitioner is a Private Limited Company engaged in the manufacture and export of garments. During the period from 08.01.2004 to 28.11.2007, the petitioner exported garments under 1583 shipping bills and availed drawback amounting to Rs.4,99,69,796/-.

3. In the year 2018, the 2nd respondent issued a show cause notice under Rule 16A(2) and (3) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. The petitioner contends that the show cause notice was not served on it. It is stated that the petitioner had closed its business in the year 2019. The 2nd respondent, however, held that the show cause notice had been duly served and that the petitioner had not submitted any reply. The proceedings were thereafter adjudicated and the impugned order came to be passed on the ground that the petitioner had not produced proof of realisation of the export proceeds. Consequent upon the impugned order, the petitioner’s bank account

was attached.

4. Learned counsel for the petitioner submitted that the show cause notice was not served on the petitioner and that no opportunity of hearing was provided before passing the impugned order. He further submitted that the proceedings for recovery of the drawback were initiated after an inordinate delay of more than ten years from the date of export and that the impugned order was passed nearly 17 years after the drawback was availed. Therefore, the recovery proceedings are barred by limitation and are also in violation of the principles of natural justice. In support of his submission, he relied upon the decision of the Co-ordinate Bench of this Court in W.P.No.18552 of 2022, dated 07.03.2025, in ***M/s. L&T Construction Equipment Ltd., represented by its Head-Hydraulics, Bangalore v. The Assistant Commissioner of Customs (Chennai-IV), Chennai***.

5. Per contra, learned Senior Standing Counsel for the respondents submitted that Rule 16 of the Customs, Central Excise Duties and Service Tax Drawback Amendment Rules, 2006, does not prescribe any period of limitation for recovery of drawback erroneously paid. Therefore, in the absence of any statutory period of limitation, the impugned order cannot be said to have been passed without authority of law. He further submitted that the erroneous

payment of drawback was noticed only in the year 2018 and that a show cause notice was immediately issued. According to him, an opportunity of hearing was also provided, which the petitioner did not avail.

6. Learned Senior Standing Counsel further submitted that an appeal is provided against an order passed under Rule 16 of the Amendment Rules under Section 128(1) of the Customs Act. Therefore, the petitioner cannot maintain the present writ petition without availing the statutory remedy of appeal. In support of his submission, he relied upon the decision of the Delhi High Court in ***Rajbir Singh v. Union of India and others, 2025 SCC OnLine Del 2847***.

7. I have considered the submissions of the learned counsel for the parties and perused the materials available on record.

8. The proceedings were initiated on the ground that the petitioner had not produced proof of realisation of the export proceeds in respect of 1583 shipping bills and, consequently, the drawback amount of Rs.4,99,69,796/- availed during the period from 2004 to 2007 was sought to be recovered. The petitioner had availed the drawback during the said period. The show cause notice was issued only in the year 2018. Though the petitioner contends that the show cause notice was not served, the respondents contend that it was duly

served.

9. The principal question that arises for consideration is whether proceedings for recovery of the drawback could have been initiated after a lapse of more than ten years from the date on which the drawback was availed, the last such payment having been made on 28.12.2007.

10. The Co-ordinate Bench of this Court, in W.P.No.18552 of 2022, relied upon the decision of the Gujarat High Court in ***Pratipa Sitex Ltd. v. Union of India, 2013 (287) E.L.T. 290 (Guj.)***, wherein it was held that three years would be the maximum reasonable period for recovery of an amount erroneously paid.

11. Learned Senior Standing Counsel for the respondents relied upon the decision of the Delhi High Court in ***Rajbir Singh*** (supra), wherein it was held that Rule 16 of the Drawback Rules does not prescribe any period of limitation. The Delhi High Court was of the view that, in the absence of a statutory period of limitation, a general period of three years cannot automatically be applied, particularly where there are strong suspicions of fraudulent availment of drawback and such availment comes to the notice of the authorities at a later point of time.

12. It is a settled principle of law that fraud vitiates all solemn acts and

that a person cannot be permitted to take advantage of his own fraud, irrespective of the passage of time.

13. In the present case, there is no allegation that the petitioner fraudulently obtained the drawback or suppressed any material facts. The only allegation is that the petitioner had not produced proof of realisation of the export proceeds. Therefore, the decision of the Delhi High Court in ***Rajbir Singh*** *(supra)*, which proceeded on allegations of fraudulent availment of drawback, would not apply to the facts of the present case.

14. Where the statute does not prescribe a period of limitation, the proceedings must nevertheless be initiated within a reasonable time. What constitutes a reasonable time would depend upon the facts and circumstances of each case.

15. In the present case, the drawback was availed during the period from 2004 to 2007. The last payment was made on 28.12.2007. The show cause notice was allegedly issued only in the year 2018 and the impugned order was passed in the year 2022. No reason has been assigned for the delay in initiating the recovery proceedings. There is also no explanation for the considerable delay between the alleged issue of the show cause notice and the passing of the

impugned order. The petitioner has also stated that it is in possession of documents evidencing realisation of the export proceeds.

16. In view of Rule 16 of the Amendment Rules, which does not prescribe any period of limitation for recovery of drawback erroneously paid, and in view of the decision of the Gujarat High Court in ***Pratipa Sitex Ltd.*** (supra), followed by the Co-ordinate Bench of this Court, the recovery proceedings initiated against the petitioner after such an inordinate delay cannot be sustained.

17. In such circumstances, the petitioner cannot be relegated to the alternative remedy of appeal under Section 128(1) of the Customs Act, since the impugned order itself has been passed beyond a reasonable period and without statutory authority to initiate such belated proceedings.

18. The impugned order was passed on 30.11.2022, whereas the present writ petition has been filed in the year 2026. The petitioner has categorically stated that the Order-in-Original was not served on it and that it came to know of the order only when its bank account was frozen. Even assuming that there was some delay in approaching this Court, the same would not come in the way of entertaining the writ petition, since the impugned order itself is found to be without statutory authority on account of the inordinate delay in initiating the proceedings.

19. The other contentions raised by the respondents in the counter affidavit need not be considered, since the present writ petition is being decided on the limited issue of whether the recovery proceedings were initiated within a reasonable period.

20. Accordingly, the impugned order dated 30.11.2022 passed by the 2nd respondent is set aside. Consequently, the attachment of the petitioner's bank account is also set aside. The petitioner is at liberty to approach the concerned bank for de-freezing of its bank account.

21. The Writ Petition is allowed. Consequently, the connected Miscellaneous Petitions are closed. There shall be no order as to costs.

19-08-2026

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

To
1. The Principal Commissioner of
Customs (Air Cargo) Chennai-VII,
Commissionerate New Customs, Houses, Air Cargo Complex,
Meenambakkam, Chennai-600 027

2.The Deputy Commissioner of
Customs (Drawback-AIR) Chennai-VII,
Commissionerate New Customs, Houses, Air Cargo Complex,
Meenambakkam, Chennai-600 027

HEMANT CHANDANGOUDAR J.

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