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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17-02-2026

Pronounced on : 20-02-2026

CORAM

THE HONOURABLE MR JUSTICE ABDUL QUDDHOSE

WP No. 35884 of 2024

AND

WMP NO. 38737 OF 2024, WMP NO. 38739 OF 2024

M/s.Hiseins Exim
No 86, 2nd Floor Varadha Muthiappan
Street Sowcarpet Chennai 600 001

Petitioner(s)

Vs

The Additional Commissioner Of
Customs (gr.5)
No 60 Rajaji Salai, Customs House
Chennai 600 001

Respondent(s)

PRAYER

Call for the records pertaining to the impugned exparte order in Original No 109886 / 2024 / Gr5 dated 17.10.2024 passed by the Respondent herein and to quash the same, in so far as the said exparte impugned order had been passed by the respondent without affording an opportunity of personal hearing to the petitioner, which is in clear violation to the principles of natural justice and the said order passed is also without jurisdiction and without following the mandates of the provisions of the Law and the various judicial pronouncements rendered in the regard.

For Petitioner(s): Mr.S.BASKARAN

For Respondent(s): Ms. Anu Ganesan
Standing Counsel



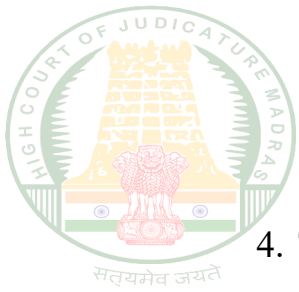
ORDER

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The issue that arises for consideration in this writ petition is whether the issuance of show cause notice under Section 124 of the Customs Act is mandatory despite the fact that the petitioner had waived the issuance of show cause notice and personal hearing notice through their letter dated 14.09.2023.

2. In the impugned order in original, the subject goods imported by the petitioner has been ordered to be confiscated by the respondent and the petitioner has been directed to pay fine in lieu of compensation as per Section 125 of the Customs Act.

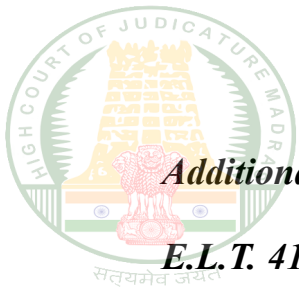
3. The learned counsel for the petitioner drew the attention of this Court to Section 124 of the Customs Act as well as Section 28 of the Customs Act and would submit that the issuance of show cause notice under both the sections are distinguishable. He would submit that under Section 28 of the Customs Act, the said show cause notice has to be issued by the Customs Department, post clearance of the goods by the importer for payment of differential customs duty. Whereas, according to him, Section 124 of the Customs Act, which also provides for issuance of show cause notice, deals with cases prior to the confiscation of goods.



4. The learned counsel for the petitioner would submit that eventhough the petitioner may have given a letter to the respondent, waiving the issuance of show cause notice and waiving the personal hearing notice, the said letter does not have any bearing for the facts of the instant case since in the instant case, the respondent has confiscated the goods under the impugned order, for which the petitioner never agreed for waiver of show cause notice and personal hearing notice. Further, he would submit that the request of the petitioner to the respondent was only for re-export of the goods. He would also submit that a direction was also issued by this Court in W.P.No.18889 of 2024 on 05.08.2024, directing the respondent to consider the application for re-export of goods submitted by the petitioner within the time frame fixed by this Court.

5. Therefore, according to the learned counsel for the petitioner, instead of considering the said application, the respondent has passed the impugned order confiscating the goods. According to him, being a confiscation order, necessarily, a show cause notice and personal hearing notice ought to have been issued to the petitioner by the respondent, which they failed to do so prior to the passing of the impugned order in original.

6. The learned counsel for the petitioner also drew the attention of this Court to a decision rendered by this Court in ***Salmag Enterprises Vs.***



Additional Commissioner of Customs (Adj), Tuticorin reported in **2021 (378)**

E.L.T. 415 (Mad.) and would submit that the very same point in issue was also

the subject matter of consideration in the aforesaid decision and while discussing Section 124 of the Customs Act, the Madras High Court has held that issuance of show cause notice under Section 124 of the Customs Act is mandatory despite the importer / exporter had earlier agreed for waiver of show cause notice and for waiver of personal hearing notice.

7. The learned counsel for the petitioner would also submit that even though in the petitioner's representation, the petitioner pointed out that in respect of the very same goods, during the contemporaneous point of time, the importers were able to obtain release of the goods, in the impugned order in original, there is no discussion about the same and therefore, he would submit that the impugned order is a non speaking order with regard to the contentions of the petitioner.

8. On the other hand, the learned standing counsel appearing for the respondent would submit as follows:

a) Since the petitioner had agreed to waive the issuance of show cause notice and also agreed to waive personal hearing notice, there is no requirement for the respondent to issue show cause notice and grant personal hearing to the petitioner before passing the impugned order;

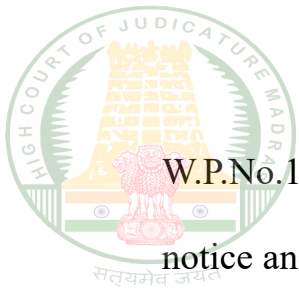


b) This Court in its order dated 05.08.2024 passed in W.P.No.18889 of 2024 had also not directed the respondent to issue show cause notice and afford personal hearing to the petitioner before passing the impugned order;

c) If aggrieved by the impugned order, the petitioner has got the right to file the statutory appeal before the competent appellate authority. Therefore, she would submit that the writ petition is not maintainable since an alternate statutory appellate remedy is available to the petitioner.

9. The learned standing counsel appearing for the respondent also drew the attention of this Court to a decision rendered by the Honourable Supreme Court in the case of *Commissioner of Customs, Mumbai Vs. Virgo Steels* reported in **2002 (141) E.L.T. 598 (S.C.)** and would submit that as held in the said decision, even though the Customs Act provides for issuance of show cause notice, being personal to the person concerned, the same can be waived by that person. Therefore, she would submit that since the petitioner herein had waived the right to be served with a show cause notice and waived the right for personal hearing, there is no error committed by the respondent before passing the impugned order against the petitioner for which, no show cause notice was issued to the petitioner and no personal hearing was also afforded.

10. The learned standing counsel appearing for the respondent would also submit that the Madras High Court in its order dated 05.08.2024 passed in

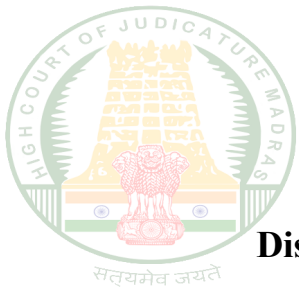


W.P.No.18889 of 2024 had also not directed the respondent to issue show cause notice and afford personal hearing to the petitioner before passing the impugned order.

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11. The learned standing counsel appearing for the respondent also submits that the petitioner never sought for issuance of show cause notice or personal hearing notice subsequent to the petitioner agreeing for waiver of show cause notice and for waiver of personal hearing notice through their letter dated 14.08.2023. She would further submit that having admitted the value enhancement for the imported goods and having agreed to pay the anti-dumping duties, the petitioner cannot go back on their undertaking by filing this writ petition, challenging the impugned order.

12. The learned standing counsel appearing for the respondent would submit that once the importer / exporter has waived the issuance of show cause notice and has waived the right to be afforded personal hearing, the said waiver is applicable to both Section 28 show cause notice and Section 124 show cause notice under the Customs Act. Therefore, she would submit that the arguments advanced by the learned counsel for the petitioner that Section 28 show cause notice and Section 124 show cause notice are distinguishable is incorrect.

**Discussion:****WEB COPY**

13. A show cause notice is a formal document issued by the authorities demanding an explanation for the alleged non-compliance prior to taking punitive action like confiscation or imposing penalties. It serves as a principle of natural justice giving the recipient a fair opportunity to defend themselves.

14. In the instant case, the petitioner is the importer, who had imported the subject goods, which has been confiscated under the impugned order in original. Admittedly, prior to the passing of the impugned order in original, while confiscating the petitioner's imported goods, the Customs Department did not issue any show cause notice to the petitioner and they also did not afford any personal hearing to the petitioner in the impugned proceedings in accordance with their own circular.

15. Customs Act contemplates issuance of show cause notice to the offender under two situations. One is under Section 28 and the other is under Section 124. Under Section 28, the show cause notice is issued to the offender for recovery of duties not levied or not paid or short levied or short paid or for recovery of the erroneously refunded customs duty. However, Section 124 of the Customs Act stipulates issuance of show cause notice by the Customs Department before confiscation of goods. Any importer of the goods is always



interested in early clearance of the imported goods. The importer will never agree for confiscation of the imported goods.

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16. In the case on hand, the petitioner through their letter dated 14.09.2023 sent to the respondent, is said to have agreed for the waiver of show cause notice and for waiver of personal hearing notice from the respondent. Whether that waiver will hold good for passing of confiscation order by the respondent is the primary point for consideration in this writ petition.

17. The contention of the learned counsel for the petitioner is that the alleged waiver of show cause notice letter, said to have been given by the petitioner, even if it is found to be true, will not apply for passing of a confiscation order by the respondent.

18. The waiver of show cause notice letter given by the petitioner must be a voluntary, conscious and informed decision taken by the importer / petitioner herein.

19. The waiver of show cause notice cannot be given through pre-printed standard waiver forms. The confiscation order passed by the respondent through the impugned order in original will cause serious civil consequences to the petitioner.



20. It is settled law that under Section 124 of the Customs Act, standard pre-printed waiver terms used by Customs officials for swift on the spot adjudication are invalid and violates the principles of natural justice. A valid waiver of show cause notice given by the importer is generally made for speeding up the release of the goods or reducing penalties for voluntary compliance. Any importer will never issue a letter to the Customs Department for waiving the necessity to issue show cause notice for the purpose of enabling the Customs Department to pass an order for confiscation of the imported goods.

21. As observed earlier, the waiver of the show cause notice will come into effect only after the importer has been given the full details of the waiver by the Customs Department and only thereafter the importer will be able to take a conscious decision by granting waiver to issue show cause notice by the Customs Department.

22. Therefore, the show cause notices issued under Section 28 and Section 124 of the Customs Act serve distinct purposes. Section 28 of the Customs Act, governs the recovery of duties (short levy, non levy or erroneously refunded), whereas Section 124 of the Customs Act deals with confiscation of goods and imposition of penalties due to violations under the



Customs Act. Therefore, the core purpose of Section 28 focuses on physical recovery, whereas, the core purpose of Section 124 focuses on penalty action (confiscation of goods and penalties for prohibited or improperly imported goods).

23.The decision relied upon by the learned Standing counsel for the respondent in the case of *Commissioner of Customs, Mumbai Vs. Virgo Steels reported in 2002 (141) E.L.T. 598 (S.C.)* has no applicability to the facts of the instant case since the said decision did not deal with Section 124 of the Customs Act, which stipulates issuance of show cause notice prior to passing of confiscation order. Since confiscation order will cause serious civil consequences on the importer / exporter and the importer / exporter would never agree to the same, the waiver of show cause notice will never apply to Section 124 of the Customs Act and may apply depending upon the facts and circumstances for the issuance of the waiver letter by the importer only to Section 28 of the Customs Act.

24.Section 124 of the Customs Act, 1962 mandates that a written show cause notice and a reasonable opportunity for hearing must be provided before confiscating the goods or imposing penalties, making it a mandatory procedure for safeguarding the rights of the importer/exporter that cannot be waived through pre-printed forms or signed waivers under pressure. Any adjudication



made by the Customs Department for confiscation of goods based on such waivers are invalid and amounts to violation of principles of natural justice.

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25. Section 124 of the Customs Act imposes a strict mandatory duty on the Customs Authorities to issue a written notice, detailing the grounds for confiscation or penalty. If a valid show cause notice is not issued in compliance with Section 124 of the Customs Act, the subsequent confiscation or penalty order would amount to a legal nullity. Whereas, Section 28 of the Customs Act, 1962 can be waived, if the person concerned, voluntarily, relinquishes their rights to it as the said notice is only for individual benefit. However, even this waiver requires a signed, conscious declaration and cannot be assumed merely from voluntary statements or pre-printed forms.

26. The Honourable Supreme Court in *Virgo Steels* case referred to supra, only under those circumstances, while dealing with Section 28 of the Customs Act, has held that the right of show cause notice under Section 28 being personal to the person concerned, the same can be waived by that person.

27. In *Virgo Steels* case referred to supra, the Honourable Supreme Court did not deal with the situation contemplated under Section 124 of the Customs Act, viz., confiscation of the imported goods, which will cause dire consequence to the importer. Therefore, it is clear that before passing the

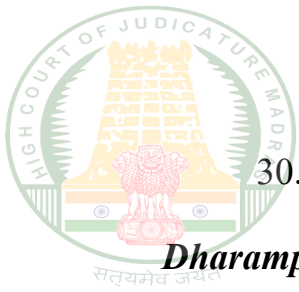


confiscation order by the Customs Department, it is mandatory to issue the show cause notice as contemplated under Section 124 of the Customs Act.

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28. In the Delhi High Court decision relied upon by the learned counsel for the petitioner in *Shiv Shakti Trading Co. Vs. Commissioner of Customs (Preventive)* reported in *2016 (336) E.L.T. 415 (Del)*, it is made clear, where *prima facie* offences of serious nature or high stakes and / or legal questions are involved, show cause notice cannot be permitted to be waived.

29. As observed earlier, an importer, only to enable them to expeditiously obtain release of goods, may give a letter to the Customs Department, waiving the necessity to issue show cause notice. Any importer for that matter will not agree to waive the necessity for issuance of show cause notice for the purpose of enabling the customs department to confiscate the imported goods and for imposition of penalty, as it will seriously affect the rights of the importers on account of the serious civil consequences caused to them. Under the impugned order in original, the confiscation order and the penalty order imposed on the petitioner has certainly caused serious civil consequences to the petitioner and therefore, necessarily, the show cause notice contemplated under Section 124 of the Customs Act in such cases can never be waived.

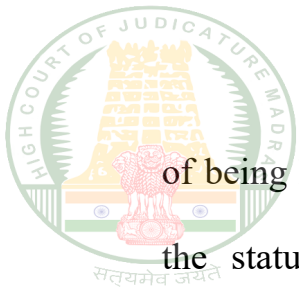


30. In the decision relied upon by the learned counsel for the petitioner in ***Dharampal Satyapal Ltd. Vs. Dy. Commissioner of C. Ex., Gauhati*** reported in

2015 (320) E.L.T. 3 (S.C.), it has been held that the validity of the order has to be decided on the touch stone of “prejudice”. The Honourable Supreme Court has held in the said decision that the ultimate test is always the same viz., “the test of prejudice or the test of fair hearing”.

31. The impugned confiscation is certainly prejudicial to the interest of the petitioner as their imported goods have been confiscated and they have also been called upon to pay penalty as well. Without any show cause notice having been issued to them as contemplated under Section 124 of the Customs Act, the impugned order in original is bad in law by applying the principle of the “touch stone of prejudice”.

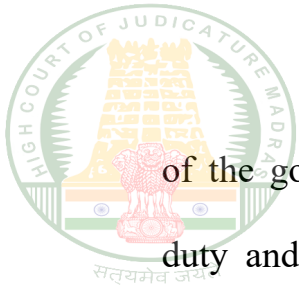
32. The Madras High Court in ***Salmag Enterprises vs. Additional Commissioner of Customs (ADJ), Tuticorin*** reported in ***2021 (378) E.L.T. 415 (Mad.)*** had an occasion to deal with Section 124 of the Customs Act. In a situation where the importer had sought for early clearance of the imported goods and had issued a letter to the Customs Department for waiver of show cause notice, the Madras High Court in the aforesaid decision held that show cause notice is mandatory as provided under Section 124 of the Customs Act for passing a confiscation order. The requirement of giving reasonable opportunity



of being heard before an order is made, is generally read into the provisions of the statute, particularly when the order has adverse consequences which obviously cover infraction of property, personal rights and material deprivations for the party affected. The impugned order in original is a confiscation order and an order, which has imposed penalty on the petitioner, which certainly has caused adverse civil consequences which obviously cover infraction of property, personal rights and material deprivations for the petitioner. The Honourable Supreme Court in the case of *Automotive Tyre Manufacturers Association Vs. Designated Authority and Others* reported in **2011 (2) SCC 258**, applied the above said principle, which can be applied to the case on hand as well.

33. For the foregoing reasons, the impugned order in original dated 17.10.2024 having been passed by the respondent by not issuing the mandatory show cause notice, contemplated under Section 124 of the Customs Act and by not affording personal hearing to the petitioner in accordance with the circular issued by the Customs Department and an order, passed in violation of the principles of natural justice, has to be quashed by this Court.

34. In the result, the impugned order in original dated 17.10.2024 passed by the respondent is hereby quashed and this writ petition is allowed. However, liberty is granted to the respondent to initiate fresh proceedings for confiscation



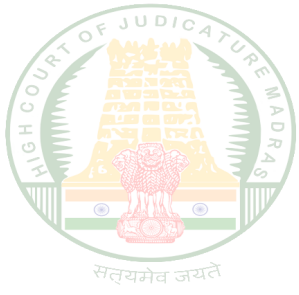
of the goods imported by the petitioner, recovery of the differential customs duty and for imposition of penalty on the petitioner by issuing show cause notice to the petitioner under Section 124 of the Customs Act and thereafter, pass final orders by following the due procedure established under law and by adhering to the principles of natural justice. No Costs. Consequently, connected miscellaneous petitions are closed.

20-02-2026

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

The Additional Commissioner Of
Customs (gr.5)
No 60 Rajaji Salai, Customs House
Chennai 600 001



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WP No. 35884 of 2024



ABDUL QUDDHOSE J.

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**pre-delivery order in
WP No. 35884 of 2024**

20-02-2026