



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-07-2026

WEB COPY

CORAM

THE HON'BLE MR.JUSTICE HEMANT CHANDANGOUDAR

WP No. 24628 of 2026

and WMP.Nos. 26854 & 26856 of 2026

A.Kiyasdeen
No 48, Ramasamy Street,
Mannady, P.O. Chennai G.P.,
Tamil Nadu 600 001

..Petitioner(s)

Vs

1. The Assistant Commissioner of Customs
(Chennai IV)
office of the Commissioner of Customs,
Chennai IV, Custom House,
No 60, Rajaji Salai, Chennai 600001
2. The Deputy Commissioner of Customs (BRC -
DBK)
office of the Commissioner of Customs,
Chennai IV, Custom House,
No 60, Rajaji Salai, Chennai 600001
3. The Branch Manager
Indian overseas bank,
Muthialpet Branch,
No 230, Thambu Chetty Street,
Muthialpet,
Chennai 600 001

..Respondent(s)



Writ petition is filed under Article 226 of Constitution of India, praying for issuance of writ of certiorarified mandamus, calling for the records relating to the 2nd respondents impugned recovery proceedings in Order in order No 81642 of 2021 vide notices bearing F. No. S. Misc. 2/ 352/ 2016-DBK dated 20.03.2021 along with the consequential communication vide F, No ARC / 1389/ 2021-CH- IV dated .03.2026 and quash the same and pass orders.

For Petitioner(s): Mr. S.Karthikei Balan

For Respondent(s): M/s. Pooja Jain, Junior Standing Counsel –
R1 & R2.

ORDER

The petitioner assails the impugned order dated 20.03.2021 passed by the 2nd respondent and the consequential order dated .05.2022 passed by the 1st respondent. In the said order a sum of Rs. 38,77,104 is sought to be recovered towards drawback availed by the petitioner and a penalty of Rs. 1,00,000 has been imposed on the petitioner.

2. The Petitioner states that he was the sole proprietor of M/s. Amrush Oversees, a firm engaged in export business and the export business was closed in the year 2011 due to poor business activities. The petitioner had exported certain goods for the period from 13.11.2008 to 19.02.2010 and had availed drawback for a sum of Rs. 38,77,104/-. During the circumstance, a show-cause notice dated 22.03.2017 was issued to the petitioner to show-cause as to why the amount paid as drawback for the exported goods along with the applicable interest shall not be recovered in terms of Rule 16(A)(2)(3) read with Customs



Central Excise Duties and Services Tax Drawback Rules, 1995 and why penalty should not be imposed under Section 117 of the Customs Act, 1962. The show-cause notice was issued alleging that the petitioner had not produced the proof of realisation of exports. Thereafter the impugned order was passed.

3. Learned Counsel for the petitioner submitted that the show-cause notice dated 22-03-2017 was not served on the petitioner nor he was given an opportunity of hearing before the impugned order was passed by the second respondent. He further contended the proceedings initiated for recovery of the drawback paid to the petitioner was after an inordinate delay of more than 7 years and the impugned order was passed after an inordinate delay of more than 12 years. Therefore, the recovery proceedings initiated against the petitioner is barred by limitation and also in violation of principles of natural justice. In support of his submissions, he placed reliance on the decision of the Coordinate Bench of this Court ***W.P. No.18552 of 2022, dated 07.03.2025 (M/s. L&T Construction Equipment Ltd. Rep by its Head-Hydraulics, Bangalore Vs. The Assistant Commissioner of Customs (Chennai-IV), Chennai).***

4. In response, the learned Counsel for the respondent submitted that under Rule 16 of the Customs, Central Excise Duties and Service Tax Drawback Amendment Rule 2006, there is no limitation prescribed for recovering the drawback paid erroneously and in the absence of any limitation prescribed, the impugned order passed by the respondents 1 & 2 cannot be said



to be lacking statutory authority. She further submitted that the erroneous payment of drawback was noticed only in the year 2017 and immediately a show-cause notice was issued and after providing an opportunity of hearing, the impugned order was passed.

5. She further submitted that against the order passed under Rule 16 of the Amendment Rules 2006, an efficacious remedy of appeal is provided under Section 128(1) of Customs Act, therefore, this petition is filed without exhausting the statutory remedy of appeal is not maintainable. In support of the submission, he placed reliance on the decision of the Delhi High Court in the case of *Rajbir Singh Vs. Union of India and others (2025 SCC Online Del 2847)*

6. All the arguments of the learned counsel for the parties and the materials placed on record have been duly considered.

7. The impugned proceedings were initiated stating that the petitioner had not proved the proof of realisation of export proceeds for 105 shipping Bills with drawback amount amounting to INR 38,77,104/- for the period from 2008 to 2010. The Petitioner had availed the said benefit of drawback. While so, a show-cause notice dated 22-03-2017 was issued to the Petitioner. The Petitioner vehemently contends that such a show cause notice was not served on him. However, the respondent contends that the show cause notice was duly



served on the petitioner. However, the scope of the writ petition is limited as to whether proceedings can be initiated after lapse of more than 7 years from the date of the payment of the last drawback, i.e., 19.02.2010.

8. Rule, 16 of the Rules empowers custom to recover drawbacks that have been erroneously or excessively paid. However, the Rule itself does not prescribe any period of limitation. In the absence of an express limitation period, the powers must ordinarily be exercised within a reasonable period. What constitutes a reasonable period depends on the facts of the case.

9. The Co-ordinate Bench of the Court in WP No. 18552 of 2022, has relied on the decision of the Gujarat High Court in the case of ***Pratipa Sitex Ltd. v. Union of India, 2013, (287, ELT 290, Gujarat,)*** wherein it is held that three years period is the maximum period which can be considered as a reasonable one for recovery of any amount erroneously paid.

10. The learned counsel for the respondent has relied on the decision of the Delhi High Court in the case of ***Rajbir Singh*** Supra. Wherein it is held that Rule No. 16 of the Drawback Rules does not prescribe any limitation, the Court is of the opinion that in the absence of a prescribed period of limitation being provided by the statute, the general limitation period of three years cannot be presumed to apply by default, especially when there are strong suspicious as to



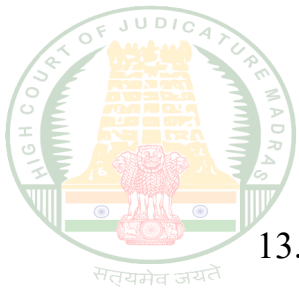
the fraudulent availment of duty drawbacks and knowledge of such availment is acquired much later.

WEB COPY

11. It is a well-settled principle of law, consistently laid down by the Supreme Court, that fraud vitiates all solemn acts and that no person can be permitted to take advantage of his own fraud, irrespective of the lapse of time.

12. In the instance, there is no allegation against the petitioner that he had obtained the drawback fraudulently or by suppression of facts and the only allegation is that the petitioner has not produced the proof of realisation of the exports. In such circumstances, in the absence of any allegation of fraud or suppression of material facts, the decision of the Delhi High Court is not applicable. When statute does not prescribe a period of limitation, the recovery must be made within a reasonable time. And what is a reasonable time depends on the facts and circumstances of the case.

13. The loss of the drawback was availed in the year 2010, the show cause notice was allegedly issued in the year 2017 and the impugned order was passed in the year 2022. No delay is explained and no explanation is offered for the inordinate delay in initiating the recovery proceedings and more particularly when the petitioner has categorically stated that he has closed his export business way back in the year 2011 and was not in possession of any of the documents relating to the export for the relevant period.



13. Therefore, in light of the provisions contained in Rule 16 of the Rules, which do not provide for limitation for recovery of the drawbacks erroneously paid and in light of the authoritative pronouncement of the Gujarat High Court in *Pratipa Sitex Ltd* case *supra* which was followed by the Coordinate Bench of this Court, the impugned proceedings initiated against the petitioner is clearly barred by limitation and in such circumstances, the petitioner cannot be relegated to avail the remedy of appeal provided under Section 128(1) of the Customs Act when the impugned order was passed lacking statutory authority.

14. Accordingly, the impugned order dated 20.03.2021 passed by the 2nd respondent and the consequential communication dated .05.2022 sent by the 1st respondent are set aside. The writ petition is allowed. Consequently, connected Miscellaneous Petitions are closed. There shall be no order as to costs.

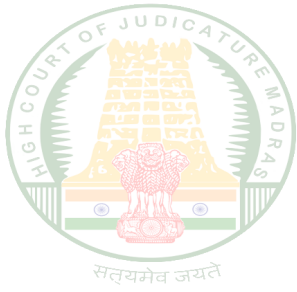
07-07-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

ak



WEB COPY

WP No. 24628 of 2



To

1. The Assistant Commissioner of Customs
(Chennai IV)
office of the Commissioner of Customs,
Chennai IV, Custom House,
No 60, Rajaji Salai, Chennai 600 001
2. The Deputy Commissioner of Customs (BRC -
DBK)
office of the Commissioner of Customs,
Chennai IV, Custom House,
No 60, Rajaji Salai, Chennai 600 001



WEB COPY

WP No. 24628 of 2



HEMANT CHANDANGOUDAR, J.

ak

WP No. 24628 of 2026

07-07-2026