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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-09-2026

CORAM

THE HON'BLE MR.JUSTICE HEMANT CHANDANGOUDAR

WP No. 22482 of 2025

and

W.M.P.Nos.25284 & 25286 of 2025

CNR: {HCMA011294082025}

Case QR

Bharat Luxindo Agrifeeds Pvt Ltd
R.S.No.74/2, Chittavarm Puntha Road,
Chittavaram (Village) Narasapuram Mandal,
West Godavari, Andhra Pradesh-534 275
Rep By its Director Pilli Govinda Rao

..Petitioner(s)

Vs

The Additional Commissioner Of Customs (Gr.IB)
O/o.The Principal Commissioner of Customs,
Chennai II(Import) Customs House,
No.60, Rajaji Salai, Chennai-600 001

..Respondent(s)

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of Certiorari, to call for the records pertaining to the impugned exparte order in Original No.111568/2025 dated 13.2.2025 passed by the respondent herein and to quash the same, insofar as the said impugned order had been passed by the respondent without jurisdiction and authority of law and in clear violation to the principles of natural justice, and also without granting an opportunity of personal hearing to the petitioner.

For Petitioner(s): Mr.S.Baskaran

For Respondent(s): Mr.S.M.Deenadayalan
Senior Standing Counsel

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ORDER

The petitioner challenges the order-in-original dated 13.02.2025 passed by the respondent under Section 28(4) of the Customs Act, 1962 (hereinafter referred to as "the Act"), whereby the petitioner's claim for levy of IGST at Nil rate under Serial No.102 of Notification No.02/2017-Integrated Tax (Rate), as amended, in respect of the goods imported under the Bill of Entry dated 24.09.2020, was rejected and a demand for differential duty of Rs.5,14,380/- was raised under Section 28(8) of the Act, together with applicable interest.

2. The petitioner filed the Bill of Entry dated 24.09.2020 for clearance of the imported goods described as "Rice Bran", classifying the same under tariff item 23024000 and claiming the benefit of Serial No.102 of Notification No.02/2017-Integrated Tax (Rate). The petitioner accordingly paid IGST at Nil rate.

3. The Bill of Entry was subsequently taken up for audit. According to the Department, the goods, namely, rice bran imported from Indonesia, were classifiable under CTH 23024000 but were liable to IGST at 5% under Serial No.103B of Schedule I to Notification No.01/2017-Integrated Tax (Rate). The Department, therefore, treated the petitioner as having short-paid the applicable IGST.

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4. Proceedings under Section 28(4) of the Act were thereafter initiated. The Department alleged that the petitioner had wilfully misclassified the goods and wrongly availed the benefit of the notification. It is stated that the petitioner did not submit a reply to the show cause notice or participate in the adjudication proceedings and, consequently, the impugned order came to be passed on the basis of the materials available on record.

5. Heard the learned counsel appearing for the petitioner and the learned Senior Standing Counsel appearing for the respondent.

6. The petitioner contends that the differential duty of Rs.2,43,449/- together with interest of Rs.83,520/- had already been paid on 30.12.2023. It is further contended that the Bill of Entry disclosed the description and classification of the goods and that the same was accepted by the proper officer. According to the petitioner, there was no suppression of facts, wilful misstatement or collusion so as to justify invocation of the extended period of limitation under Section 28(4) of the Act.

7. The Department, on the other hand, contends that the extended period prescribed under Section 28(4) was rightly invoked on the ground that the petitioner had wilfully misclassified the goods and had thereby fraudulently availed the benefit of the notification.

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8. The short question that arises for consideration is whether the ingredients necessary for invoking Section 28(4) of the Act are made out in the facts of the present case.

9. The bill of entry is dated 24.09.2020 which was accepted by the proper officer on the same day. The alleged show cause notice is dated 07.05.2020. Section 28(1) of the Act applies where duty has not been levied, has been short-levied, has been erroneously refunded, or has been short-paid, for reasons other than collusion, wilful misstatement or suppression of facts. In such cases, Section 28(1)(a) requires the proper officer to issue a notice within two years from the relevant date, calling upon the person chargeable with duty to show cause why the amount specified in the notice should not be paid.

10. Section 28(4), on the other hand, applies where such non-levy, short-levy, non-payment or short-payment of duty is by reason of collusion or any wilful misstatement or suppression of facts by the importer or the exporter or the agent or employee of the importer or exporter. In such cases, the proper officer is empowered to issue the notice within five years from the relevant date.

11. Therefore, the mere fact that the Department subsequently takes a different view regarding the classification of the goods or the applicability of an exemption notification would not, by itself, justify invocation of Section 28(4).

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There must be material to establish that the short-payment was occasioned by collusion, wilful misstatement or suppression of facts.

12. In the present case, the petitioner disclosed the description of the imported goods as "Rice Bran" in the Bill of Entry and declared the classification under CTH 23024000. The petitioner also specifically claimed the benefit of the relevant notification. The Bill of Entry was processed and accepted by the proper officer.

13. There is no material placed before this Court to show that the petitioner had concealed the nature, description, classification or any other material particulars relating to the imported goods. Equally, there is no material demonstrating that the petitioner had deliberately furnished a false declaration or suppressed any material fact with an intention to evade payment of duty.

14. The dispute, therefore, appears to be essentially with regard to the applicability of the exemption notification and the rate of IGST payable on the imported goods. Such a dispute, in the absence of material establishing the ingredients specified in Section 28(4), cannot by itself justify invocation of the extended period.

15. The mere use of the expression "wilful misstatement" in the show cause notice or in the impugned order cannot confer jurisdiction under Section 28(4). The Department is required to establish the factual basis for such

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allegations by placing relevant material on record. In the present case, no such material has been demonstrated before this Court.

16. The fact that the petitioner had already paid Rs.2,43,449/- towards differential duty and Rs.83,520/- towards interest on 30.12.2023 may be relevant to the proceedings, but the legality of the demand for the balance amount is not being examined in this writ petition. This Court is also not expressing any opinion on the correct classification of the goods or the rate of IGST otherwise payable.

17. The respondent has raised an objection that the petitioner has an effective alternative remedy of appeal under Section 128 of the Act. Ordinarily, the existence of such remedy is a relevant consideration in the exercise of jurisdiction under Article 226 of the Constitution. However, the rule of alternative remedy is not an absolute bar where the proceedings are challenged on the ground that the statutory conditions for assuming jurisdiction have not been satisfied.

18. In the present case, the principal challenge is to the invocation of the extended period of limitation under Section 28(4) of the Act. As already alluded above the essential conditions for invoking the said provision have not been satisfied. The objection raised by the respondent regarding the availability of an alternative remedy cannot, therefore, by itself, bar the exercise of writ jurisdiction. It is well settled that the existence of an alternative remedy is not an absolute bar to the jurisdiction of this Court under Article 226 of the Constitution, particularly where the impugned proceedings suffer from patent illegality or the

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statutory conditions for assuming jurisdiction have not been fulfilled. In the facts of the present case, relegating the petitioner to the appellate remedy would, therefore, not be warranted.

19. Accordingly, the writ petition is allowed and the impugned order-in-original dated 13.02.2025 is set aside. However, this order shall not preclude the respondent from taking such action as may otherwise be permissible under Section 28 of the Act, subject to the applicable period of limitation and other statutory requirements.

20. Consequently, the connected miscellaneous petitions are closed. There shall be no order as to costs.

17-09-2026

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

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To

The Additional Commissioner Of Customs (Gr.IB)
O/o.The Principal Commissioner of Customs,
Chennai II(Import) Customs House,
No.60, Rajaji Salai, Chennai-600 001.

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HEMANT CHANDANGOUDAR, J.

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