



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

MONDAY, THE 4TH DAY OF DECEMBER 2023 / 13TH AGRAHAYANA, 1945

WP(C) NO. 36142 OF 2023

PETITIONER/S:

SHAJI K.A
AGED 50 YEARS
PROPRIETOR, M/S A-ONE DANCE COSTUMES, 39/2101,
GEETA MANDIR, NETTIPADAM ROAD, ERNAKULAM SOUTH,
ERNAKULAM, KERALA, PIN - 682016.

BY ADVS.
M.BALAGOPAL
R.DEVIKA
ANJALI MENON
THRESSY THOMAS

RESPONDENT/S:

- 1 COMMISSIONER OF CUSTOMS
GOVERNMENT OF INDIA, MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE, OFFICE OF THE COMMISSIONER
OF CUSTOMS, CUSTOM HOUSE, WILLINGTON ISLAND,
COCHIN, PIN - 682009.
- 2 ADDITIONAL DISTRICT MAGISTRATE
OFFICE OF THE DISTRICT COLLECTOR, DISTRICT
COLLECTORATE, FIRST FLOOR, CIVIL STATION,
KALCKANAD, ERNAKULAM, PIN - 682030

BY ADV ADV. P.G. JAYASHANKAR PGJ

OTHER PRESENT:

SRI.JOBY JOSEPH-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 04.12.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



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J U D G M E N T

The present writ petition has been filed seeking the following reliefs:

(a) To issue a writ of mandamus or any other writ order or direction, directing the 1st respondent to refund the total amount of Rs.7,02,692 along with interest and to cancel the bond executed by the petitioner forthwith;

Or in the alternative

(b) Issue a writ of mandamus or any other writ, order or direction directing the respondents to destroy the confiscated goods and refund the balance of the excess duty and deposit paid by the petitioner, after deducting the actual cost of destruction of the confiscated goods within a time frame fixed by this Court;

(c) Issue a writ of mandamus or any other writ order or direction directing the 1st respondent to pay interest on delay in grant of refund;”

2. On the last date of posting, i.e. on 17.11.2023, this Court passed the following interim order:

“The Customs Department says it has written letters to the District Collector to



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take steps to destroy the explosive material seized by them, which the petitioner had imported. The Settlement Commission has directed refund of excess duty paid amounting to Rs.3,02,692/- and a cash deposit of Rs.4 lakhs, totalling Rs.7,02,692/- after deducting the expenses for the destruction of the confiscated goods and also return the bond executed by the petitioner. The Settlement Commissioner passed this order on 27.05.2019.

2. The excess duty paid along with cash after deducting the expenses for the destruction of seized goods is to be returned to the petitioner. Despite more than four years from the date of the order passed by the Settlement Commissioner, no effective steps have been taken for the destruction of the seized explosives. As a result thereof, the petitioner has not been refunded the excess duty paid and the cash deposit.

3. The District Collector is, therefore, directed to instruct the Explosives Department to take immediate steps for the destruction of the seized explosive material. If steps are not taken for the destruction of the material seized from the petitioner within two weeks from today, the District Collector may be summoned by this Court to explain why necessary steps have not been taken despite several communications having been addressed by the Customs Department.



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Post the matter on 04.12.2023 for necessary compliance and filing of the statement on behalf of the District Collector by the learned Government Pleader.”

3. Learned Standing Counsel for the Customs Department submits that, as per his instructions, the confiscated goods have been destroyed by the State Government's Explosives Department. He further submits that the cost for destroying those confiscated goods is to be assessed and deducted from the refund claimed by the petitioner.

4. Considering the fact that the claim for refund of the petitioner in terms of the order passed by the Settlement Commission has not been processed only because of non-destruction of the confiscated goods by the Explosives Department, and now that the confiscated goods have been destroyed, the 1st respondent is directed to process the claim of the petitioner for refund, in terms of the order in Ext.P3 dated 27.5.2019 passed by the Settlement



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Commission and refund the amount, if any, to the petitioner within a period of three weeks.

With the aforesaid direction, the present writ petition stands finally disposed of. Pending interlocutory application, if any, in the present writ petition stands dismissed.

Sd/-
DINESH KUMAR SINGH
JUDGE

jg

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APPENDIX OF WP (C) 36142/2023

PETITIONER EXHIBITS

Exhibit P1	A TRUE COPY OF THE SHOW CAUSE NOTICE DATED 5.9.2018
Exhibit P2	A TRUE COPY OF THE APPLICATION BEFORE THE CUSTOMS AND CENTRAL EXCISE SETTLEMENT COMMISSION DATED 27.11.2018
Exhibit P3	A TRUE COPY OF THE FINAL ORDER NO.14/2019-CUS. DATED 27.5.2019
Exhibit P4	A TRUE COPY OF THE CHALLAN NOS. CM-147 DATED 12.06.2019
Exhibit P4(a)	A TRUE COPY OF THE CHALLAN NOS. CM-148 DATED 12.06.2019
Exhibit P5	A TRUE COPY OF THE REQUEST LETTER DATED 01.07.2019
Exhibit P6	A TRUE COPY OF THE REPLY DATED 7.8.2019 ISSUED BY THE 1ST RESPONDENT
Exhibit P7	TRUE COPY OF THE FOLLOW UP LETTER DATED 23.10.2019
Exhibit P8	TRUE COPY OF THE FOLLOW UP LETTER DATED 14.12.2019
Exhibit P9	A TRUE COPY OF THE REPLY F. NO. SIIB/08/2019-CUS DATED 20.12.2019
Exhibit P10	A TRUE COPY OF THE APPLICATION DATED 4.2.2020 SUBMITTED UNDER THE RTI ACT, 2005



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Exhibit P11 TRUE COPY OF THE REPLY DATED 4.3.2020 ISSUED
FROM FILE NO DCEKM/2892/2020-M4

Exhibit P11(a) TRUE TRANSLATION OF EXT P11

Exhibit P12 TRUE COPY OF THE LETTER ISSUED TO THE 1ST
RESPONDENT DATED 24.6.2020

Exhibit P13 TRUE COPY OF THE LETTER ISSUED TO THE 1ST
RESPONDENT DATED 28.4.2022