

Mohammed Afroz Memon vs Union Of India & Ors. on 2 April, 2025

Author: Prathiba M. Singh

Bench: Prathiba M. Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:

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W.P.(C) 2949/2025 & CM APPLs. 13993/2025 & 13994/2025

MOHAMMED AFROZ MEMON

Through:

Mr. Akhil Krishan Magg
Ayush Mittal, Advocate

versus

UNION OF INDIA & ORS.

Through:

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Mr. Kunal Rawat, SPC w
and Ms. Dolly Verma, A
Mr. Gibran Naushad, Sr
Counsel with Mr. Harsh
Mr. Suraj Shekhar Sing

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. This petition is filed under Article 226 and 227 of the Constitution of India by the Petitioner - Mohammed Afroz Memon, challenging the impugned show cause notice (hereinafter 'SCN') bearing No. 09/2024 dated 08th March, 2024 on the ground that the same has been issued belatedly and hence, deserves to be quashed and set aside.
3. The background of the case is that the Directorate of Revenue Intelligence, Mumbai Zonal Unit ('DRI'), had unearthed a large scale syndicate which was operating through multiple Importer-Exporter Codes ('IECs') procured by forging 'Know Your Customer'('KYC') documents of third parties. Overvalued goods are alleged to have been exported using these IECs to obtain duty drawback benefits and IGST refund.
4. The main person accused of running the syndicate is one Mr. Neeraj Bhanupratap Singh who is alleged to have acquired control of 56 such IECs.
5. In respect of this investigation, it was also found by DRI that various entities were involved in supplying goods to the said main accused. The DRI had inspected various live consignments and

had also conducted a market survey which revealed that ordinary garments were being overpriced only with an intention to avail duty drawbacks. There is a detailed investigation report which was the basis of the SCN which was issued on 08th March, 2024.

6. There are a total of 79 firms who have received the SCN and the Petitioner herein, being the main accused is one of the noticees in the said SCN. An opportunity was given to each of the noticees to file a reply within the stipulated time period. However, it appears that as on date no reply has been filed by the Petitioner. A hearing notice is stated to have been received by the Petitioner on 29th January, 2025 and at this stage, the Petitioner has sought to challenge the present SCN.

7. The submission of Id. Counsel for the Petitioner is that this matter would be covered by the decision of the Gujarat High Court in SCA No. 7165/2021 titled as M/s Raghav International & Others v. Union of India & Anr. wherein it was held that since the SCN was issued after the expiry of three years, the SCN itself would be liable to be quashed. Id. Counsel has also relied upon the order of the Supreme Court dated 19th October, 2023 in SLP(Civil) 24022/2023 titled as Union of India & Ors. Versus M/S Raghav International & Anr. which reads as under:

"Delay in filing the special leave petition is condoned.

Having heard learned counsel for the petitioners and learned counsel for the respondent(s)-caveator, we find that this special leave petition arises out of Special Civil Application No.7165 of 2021 wherein, the period of assessment was 2011-2015. In respect of the said period, the dates of issuance of the show cause notices are 16.03.2021, 01.04.2021, 01.04.2021 and 25.05.2021 which means that the show cause notices were issued 6 to 10 years thereafter. There is no explanation whatsoever for the delay in issuance of notices to the respondents-herein.

In the circumstances, a challenge made to the show cause notices before the High Court was successful inasmuch as the action of the respondent authority was held to be belated and hit by delay and latches. Consequently, the show cause notices were quashed. We do not think that the impugned order would call for any interference in this case.

Hence, the special leave petition is dismissed on the basis of delay and latches.

Pending application(s), if any, shall also stand disposed of."

8. A perusal of the above order would show that in the said matter, the SCNs were issued after a delay of six to ten years and there was no reasonable explanation for such delay.

9. In the present case, the SCN itself shows the magnitude of the investigation which led to unearthing of a complete misuse of the duty drawback scheme in collusion with several parties. Such an investigation would reasonably require some time to be concluded. Moreover, the SCN itself is dated 08th March, 2024, i.e. almost a year old, and the Petitioner has sought to approach this Court

now.

10. Under these circumstances, considering that various factual aspects would have to be gone into, the Petitioner may file its reply within a period of 30 days and a date for personal hearing shall be fixed in this matter. After hearing the Petitioner and other similar noticees, the order shall be passed in accordance with law.

11. Further, insofar as the Petitioner is concerned, it is the contention of the Respondent that Rule 16A of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 would not apply as the said rule would only be applicable with respect to the main accused person Mr. Neeraj Bhanupratap Singh. This issue shall also be considered by the Adjudicating Authority.

12. The petition stands disposed of in the above terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH JUDGE RAJNEESH KUMAR GUPTA JUDGE APRIL 2, 2025/MR/ss