IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

WEDNESDAY, THE 11TH DAY OF JUNE 2025 / 21ST JYAISHTA, 1947

WP(C) NO. 42612 OF 2024

CRIME NO.107/2023 OF COMMISSIONARATE OF CUSTOMS PREVENTIVE, Ernakulam

PETITIONER:

MANU VALIYAVEETTIL MADHU,
AGED 25 YEARS, S/O. MADHU V C,
MAVALIYAVEETTIL HOUSE,
CHERAI-PO, PALLIPURAM, ERNAKULAM, PIN - 683514

BY ADVS.
SHRI.ADITHYA KIRAN V.E
SMT.CHRISTINA ANNA PAUL
SHRI.LEO SANJO

RESPONDENTS:

1 ADDITIONAL COMMISSIONER OF CUSTOMS
OFFICE OF THE COMMISSIONER OF CUSTOMS,
CUSTOMS HOUSE, WILLINGTON ISLAND, COCHIN,
PIN - 682009

2 ASSISTANT COMMISSIONER OF CUSTOMS
(REVENUE RECOVERY CELL), OFFICE OF THE
COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE,
WILLINGTON ISLAND, COCHIN, PIN - 682009

3 COMMISSIONER OF CUSTOMS
OFFICE OF THE COMMISSIONER OF CUSTOMS,
CUSTOMS HOUSE, WILLINGTON ISLAND, COCHIN,
PIN - 682009

BY ADV SRI.RAJESH. K.RAJU, SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11.06.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner is challenging Ext.P3 order in original, passed by the 1st respondent, ordering confiscation of 1097.57 grams gold and imposing a penalty of Rs.6,00,000/- upon the petitioner.

2. The facts that led to the filing of this writ petition are as follows: While the petitioner was coming from abroad on 06.06.2023, the officers of the Air Intelligence Unit intercepted the petitioner and thereupon, from the hand baggage of the petitioner, 1184.30 grams of capsules allegedly containing gold in paste form, were recovered. The quantity of the gold therein was ultimately determined as 1097.57 grams and therefore, the proceedings under Section 123 of the Customs Act, 1962 were commenced by issuing Ext.P2 show cause notice dated 11.08.2023. According to the petitioner, at the time when Ext.P2 show cause notice was issued, he was abroad and therefore, he could not submit a proper reply to the said show cause notice. It was also averred in the writ petition that,

the elderly parents of the petitioner, who were served with the notice, lacked the requisite literacy or understanding, with regard to the contents of Ext.P2 notice, and thus the petitioner was deprived of an opportunity to provide a timely reply to Ext.P2 show cause notice. Later, on coming to know about Ext.P2 show cause notice, the petitioner appeared for personal hearing before the 1st respondent through virtual mode on 11.01.2024 and thereafter, Ext.P3 order was passed without providing the petitioner a proper opportunity to contest the matter. As mentioned above, as per Ext.P3, the gold was confiscated and a penalty of Rs.6,00,000/- was also imposed upon the petitioner. This writ petition is submitted in such circumstances, challenging Ext.P3 order and also seeking a direction to the respondents to afford the petitioner a fair opportunity to submit reply to Ext.P2 show cause notice and present his case before the competent authority.

3. A statement has been submitted by the learned Standing

Counsel on behalf of the respondents. In the statement, the contention that the petitioner was denied a proper opportunity to contest the matter, was denied. It was averred that, as per Section 153(1)(a) of the Customs Act, a show cause notice can be served to the addressee by giving it or tendering it directly to any adult member of his family residing with him. In this case, the notice was served upon the elder member of the family and therefore, there was proper notice. Along with the statement, Annexure R(1)(c) was also produced, which was a communication, sent in the name of the petitioner, requesting an opportunity to appear for personal hearing through online mode. According to the respondents, the same was considered and opportunity to the petitioner to appear through online mode was granted. Accordingly, a hearing was already conduced before completing the proceedings as per Ext.P3, in which the petitioner appeared through online mode and the proceedings were completed as evidenced by Ext.P3. Moreover, it was pointed out that, Ext.P3 order is appealable under Section 128 of the Customs Act, 1962 and the petitioner did not avail the said statutory remedy as well. Therefore, they sought for dismissal of this writ petition.

4. I have heard Sri.Leo Sanjo, learned Counsel for the petitioner and Sri.Rajesh K. Raju,learned Standing Counsel for the respondents.

5. The specific contention raised by the learned Counsel for the petitioner is that, the petitioner was not granted a proper opportunity to defend the proceedings initiated based on Ext.P2. However, as rightly pointed out by the learned Standing Counsel for the respondents, even going by the pleadings in the writ petition, Ext.P2 show cause notice was served upon the elderly parents of the petitioner and according to him, as the parents lacked requisite literacy and understanding of its importance, the petitioner was deprived of the opportunity. As far as the service of notice on the

adult member in the family of the noticee is concerned, the same could be treated as proper service as contemplated under Section 153 of the Customs Act, 1962. Therefore, in view of the fact that there is an admission that the notice was served upon the petitioner, through the elder member of the family of the petitioner, the contention of the petitioner cannot be accepted.

6. Moreover, it is discernible from the pleadings in the writ petition itself that, the petitioner appeared for personal hearing through virtual mode on 11.01.2024, before the adjudicating authority. The petitioner denies issuance of Ext.R(1)(c) communication, as according to him, the same was issued from a place called Cherai on 11.09.2023, whereas the petitioner was not in India at the relevant time. However, even if that contention is accepted, it is an admitted fact that the petitioner appeared for personal hearing through online mode on 11.01.2024. Still further, in Ext.P3, it is specifically observed that, during the course of

hearing on 11.01.2024, the petitioner explained the circumstances under which the petitioner got involved in the transactions and no contention was raised by the petitioner with the regard to the non receipt of the show cause notice or denial of opportunity to submit reply to the same. Therefore, I am of the view that, the contentions that the petitioner was denied a proper opportunity to contest the matter cannot be accepted. This is particularly because, the fact that the notice was served upon the petitioner through the elderly member of the family is admitted and later, an opportunity to appear through virtual mode was availed by the petitioner. By utilizing the said opportunity, the petitioner appeared before the adjudicating officer concerned and offered his explanation without raising any contention with regard to the non receipt of show cause notice or denial of opportunity to submit an explanation to Ext.P2.

7. As far as the merits of the finding in Ext.P3 is concerned, it is appealable under Section 128 of the Customs Act,

1962. Even though Ext.P3 order was passed on 30.01.2024, the petitioner did not invoke the statutory remedies and instead he filed this writ petition only on 29.11.2024, i.e., after ten months of the said notice.

Thus, when all the aforesaid aspects are taken into consideration and also the fact that the petitioner did not avail the statutory remedy which was available to him, I do not find any justifiable reason to entertain this writ petition and to grant any relief sought. Accordingly, this writ petition is dismissed without prejudice to the right of the petitioner to invoke any other remedies, if any available.

Sd/-
ZIYAD RAHMAN A.A.
JUDGE

scs

APPENDIX OF WP(C) 42612/2024

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF POWER OF ATTORNEY DATED 18.09.2024
Exhibit P2	TRUE COPY OF THE SHOW-CAUSE NOTICE DATED 11.08.2023
Exhibit P3	TRUE COPY OF THE IMPUGNED ORDER DATED 30.01.2024

RESPONDENT ANNEXURES

Annexure R-1(a)	A true copy of the mahazar dated 6-6-2023 drawn by Inspector of Customs (Preventive Officer)
Annexure R-1(b)	A true copy of the postal receipt dated 21/8/2023, showing the despatch of the show cause notice to the petitioner
Annexure R-1(c)	A true copy of the letter dated 11/9/2023 submitted by the petitioner to the Assistant Commissioner of Customs, Office of the Assistant Commissioner of Customs, Nedumbassery, Cochin