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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
12.10.2026	19.11.2026

CORAM

THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

WP No. 39324 of 2026

CNR:{HCMA012318132026}

Case QR

WP No. 39329 of 2026
and
WMP No. 46476 of 2026 & WMP No. 46480 of 2026

M/s.Turbo Energy Pvt. Ltd.
Rep. by its Authorized Signatory,
Mr.T T Hayagreevan, No. 67 Chamiers Road,
Chennai Tamil Nadu 600 028

..Petitioner(s)

Vs

1. The Chairman
   Central Board of Indirect taxes and customs,
   Ministry of Finance, Department of Revenue,
   Government of India, New Delhi

2. Director of Revenue Intelligence,
   Mumbai Zonal Unit, Directorate of Revenue
   Intelligence, 5th Floor, 13, Sir Vithaldas
   Thackersay Marg, New Marine Lines,
   Mumbai 400 020

3. Senior Intelligence officer,
   Mumbai Zonal unit,
   Directorate of Revenue Intelligence,
   5th Floor, 13, Sir Vithaldas Thackersay Marg,
   New Marine Lines, Mumbai 400 020

4. Intelligence officer, Mumbai Zonal unit,
   Directorate of Revenue Intelligence,

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5th Floor, 13, Sir Vithaldas Thackersay Marg,
New Marine Lines, Mumbai 400 020

..Respondent(s)

WP No. 39329 of 2026



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Mr.T T Hayagreevan,
No. 67 Chamiers Road,
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..Respondent(s)

W.P.No.39324 of 2026

Prayer: Petition filed under Article 226 of the Constitution of India, for issuance

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of Writ of Mandamus to direct the 1st respondent and its employees, officers and agents, including but not limited to Respondents 2 to 4 to refrain from taking any coercive or adverse action against the petitioner, including the seizure of goods lying at the petitioner's factory premises or compelling the petitioner to make payment of the alleged differential duty, interest and penalty as voluntary payments under Section 28 (5) of the Customs Act 1962.

WP No. 39329 of 2026

Prayer: Petition filed under Article 226 of Constitution of India, for issuance of Writ of Mandamus to direct the Respondents 2 to 4 to furnish copies of the complete and unedited video footage and recordings pertaining to the search proceedings, investigation and statements recorded of the employees of the petitioner.

For Petitioner(s):	Mr.S.Vijay Narayanan, Senior Counsel for Mr. Raghavan Ramabadran (in both Writ Petitions)
For Respondent(s):	Mr.Sai Srujan Tayi, Senior Standing Counsel and Ms.Pooja Jain, Junior Standing Counsel (in both Writ Petitions)

COMMON ORDER

W.P.No.39324 of 2026 has been filed to direct the 1st respondent and its employees, officers and agents, including but not limited to Respondents 2 to 4 to refrain from taking any coercive or adverse action against the petitioner,

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including the seizure of goods lying at the petitioner's factory premises or compelling the petitioner to make payment of the alleged differential duty, interest and penalty as voluntary payments under Section 28 (5) of the Customs Act 1962.

2.WP No. 39329 of 2026 has been filed to direct Respondents 2 to 4 to furnish copies of the complete and unedited video footage and recordings pertaining to the search proceedings, investigation and statements recorded from the employees of the petitioner.

3.Mr.Vijay Narayanan, learned senior counsel appearing for the petitioner made the following submissions:

3.1.The petitioner is a reputed manufacturer of turbochargers and turbocharger components for more than three decades. The petitioner imports "Turbine Wheel Raw Parts", which are classified under Customs Tariff Item (CTI) 7508 9090 as articles of nickel and nickel alloys.

3.2.According to the petitioner, the 2nd respondent has taken the view that the subject goods, which were classified under CTI 7508 9090, were misclassified by the petitioner and ought to have been classified under CTI 8414 9090. It is the claim of the petitioner that until 2015 the subject goods were classified under CTH 8414. However, the petitioner started classifying the

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subject goods under CTH 7508. To this effect a letter dated 06.08.2015 was submitted by the petitioner, intimating the change in classification of the goods to the respondents.

3.3.Based on the petitioner's intimation, the department had subjected the imports to provisional assessment from 06.08.2015 to 21.06.2017. The provisional Bills of Entry were finalised vide Order-in-Original No.406/2017 dated 21.06.2017, which was passed by the Assistant Commissioner of Customs. In the said Order-in-Original, the subject goods were classified under CTI 7508 9090 after considering the Process Verification Certificate.

3.4.According to the petitioner, the classification adopted by the petitioner under CTI 7508 9090 was not challenged by the Customs Authorities before any appellate forum and therefore, the said classification attained finality.

3.5.According to the petitioner, the subject goods were classified under CTH 7508 for a considerable period and this classification was neither challenged nor questioned by any authority, thereby indicating that the department has accepted the classification under CTH 7508.

3.6.According to the petitioner, the classification adopted by the

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petitioner was also examined by the Special Investigation and Intelligence Branch and by the Directorate of Revenue Intelligence during 2019 itself. A letter dated 23.03.2019 was also issued by the Deputy Commissioner of Customs, ACC, Chennai, with regard to the classification of the subject goods.

3.7.The 2nd respondent conducted search operations on 02.09.2026 and 03.09.2026 at the corporate office and manufacturing facility and verified the relevant records, processes and import documents. During the search, according to the petitioner, they have extended the fullest cooperation. Thereafter a Panchanama was recorded on 03.09.2026. In continuation of the search and seizure proceedings, a summon dated 09.09.2026 was issued to one Mr.Hayagreevan, who is the Chief Financial Officer (CFO) of the petitioner's company and his statements were recorded on 11.09.2026 and 12.09.2026.

4.It is the case of the petitioner that the Chief Financial Officer was confronted with regard to the prospect of making a voluntary payment of the entire alleged differential duty amounting to approximately INR 18 crores.

5.It is their further case that the consignments, imported under Bills of Entry Nos.3429898 dated 28.08.2026, 3455810 dated 29.08.2026 and 3269345 dated 20.08.2026 were seized by the 4th respondent under Section 110 of the Customs Act, 1962. Three separate seizure memos were issued by the 4th

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respondent on 11.09.2026.

6.The learned senior counsel further submitted that the seized goods valued at approximately Rs.1,31,00,257/- are lying at Calyx Container Terminal Private Limited, Ennore Cargo Container Terminal Private Limited and Chandra CFS & Terminal Operators Private Ltd.. The seizure memos are stated to be based solely on a *prima facie* finding of misclassification under CTI 7508 9090.

7.The learned senior counsel pointed out that an email dated 18.09.2026 was addressed by the petitioner to the respondents, seeking an immediate intervention by the 1st respondent. Another representation was sent on 23.09.2026. As no reply was received from the respondents, the present writ petitions have been filed.

8.The learned senior counsel for the petitioner relied upon the following judgments:

1.Dabur India Ltd. Versus State Of Uttar Pradesh, reported in *1990 (7) TMI 109 [Supreme Court].*

2.Vodafone Essar South Ltd. Versus Union of India, reported in *2009 (237) E.L.T. 35 (Bom.)*

3.Bhumi Associate Versus Union of India, reported in *2021 (46) G.S.T.L. 36 (Guj.)*

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4.Cleartrip Private Ltd., Mumbai & Ors. Versus The Union of India, reported in *2016 (6) TMI 835 [Bombay High Court].*

5.Neelkamal Realtors Power Pvt. Ltd. & Anr. Versus The Union of India & Ors, reported in *2019 (8) TMI 434 [Bombay High Court].*

6.Union of India vs Bundl Technologies (P.) Ltd., reported in *[2022] 136 taxmann.com 112 [Karnataka High Court].*

7.Vallabh Textiles Versus Senior Intelligence Officer, reported in *2023 (70) G.S.T.L. 3 [High Court of Delhi].*

8.Sanmar Foundaries Ltd. vs Commr. Of C. Ex. & Cus., Tiruchirappalli, reported in *2015 (325) E.L.T. 854 (Mad.) [Division Bench of this Court].*

9.CENTURY PLYBOARDS (INDIA) LTD. Versus UNION OF INDIA, reported in *2022 (381) E.L.T. 755 [High Court of Gauhati].*

10.Ganesh Chandra Mrig vs Superintendent (Prev.), Commissionerate of Central Excise, Customs and Service Tax, Bhubaneswar-II, reported in *2010 (5) TMI 912* [*Orissa High Court].*

9.Per contra, the learned senior standing counsel appearing on behalf of the respondents filed a counter affidavit and made the following submissions:

10.The facts are not disputed, however he made certain clarifications with regard to the description of the goods and the tariff items under which they have been classified. He primarily contended that Customs Tariff Heading 7508, which is described as *"other articles of nickel"* and Customs Tariff item 7508 9090, which covers *"other articles of nickel and nickel alloy"*, carry a rate

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of duty described as "Free". He relied upon the customs tariff Heading 8414 which covers air or vacuum pumps, air or other gas compressors and fans, ventilating or recycling hoods incorporating a fan, whether or not fitted with filters and gaslight biological safety cabinets, whether or not fitted with filters. He referred to Tariff item 8414 9090 and submitted that the applicable rate of duty is 7.5% per kg.

11.He further submitted that the WCO Explanatory Notes to Group B (Other), CTH 7508, provide that the group covers, inter alia, Nickel articles corresponding to the Iron or Steel articles referred to in the Explanatory Notes to Headings 73.25 and 73.26. The said explanation is extracted hereunder:

> *"It is clarified here that this heading does not cover castings which are products falling in other headings of the nomenclature (e.g.,recognizable parts of machinery or mechanical appliances) or unfinished castings which require further workings but have the essential character of such finished products"*

12.He further relied upon the circular No.225/59/96-CX dated 01.07.1996, wherein at paragraph 3, it has been stated that *"those castings moulds viz., precision castings and/or are, as such, ready to be used as machine parts would be regarded as articles having essential character of machine parts and would be classified under Ch 84, 85, 86, 87 etc."*.

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13.According to the respondent, on the analysis of Tariff item 7508, taking into consideration of the circular, indicates that the subject goods are liable to be excluded from the purview of heading 7508 (articles of nickel) and classified under Chapter 84. The analysis appears to indicate non payment of duty amounting to approximately Rs.15.75 crores from January 2022 till date. The respondents commenced an investigation in this regard and based on the same, searches were conducted at the corporate office situated at No.67, Chamiers Road, R A Puram, Chennai and other locations on 02.09.2026 and 03.09.2026. A panchanama was also prepared, in which, it was recorded that *"imported turbine wheel does not undergo rough rough machining and also that these imported turbine wheels are precision cast"*.

14.It is the case of the respondents that the declaration submitted by the importer before the customs authorities for finalisation of the provisional Bills of Entry was incorrect because, in contrast to the submission, no rough machining was performed on the imported turbine wheel castings. The importer had referred to the above mentioned circular but had not revealed that the goods were precision cast, which according to the respondents, clearly points to wilful misstatement and suppression of facts.

15.According to the respondents, incriminating evidences was obtained indicating that the importer had knowledge of the correct classification and

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continued to resort to wilful misstatement and suppression of facts during the inquiry.

16.It is the case of the respondent that the officials of the petitioner were examined and their statements were recorded under the Customs Act, wherein the persons, who appeared before the respondent had stated that all the details were furnished to the Director against whom the notice was issued, which is the subject matter of the present writ petition.

17.With regard to the exercise of power under Section 108 of the Customs Act, the learned senior standing counsel submitted that the said power cannot be questioned, as its scope has been considered by the Hon'ble Supreme Court. To substantiate the same, he relied upon the following judgments:

1.Union of India v. Padam Narain Aggarwal reported in *(2008) 13 SCC 305,* wherein the Hon'ble Supreme Court refused to interfere at the stage when Customs authorities had merely issued summons under Section 108.

2.*Ramesh Chandra Mehta v. State of W.B.* reported in *AIR 1970 SC 940*, wherein the Hon'ble Supreme Court held that a person called upon to make a statement before the Customs Authorities cannot be said to be an accused of an offence.

3.CRA No.11-DB of 2010 titled 'Fatima Bibi Vs. Inspector of Customs' before Hon'ble Punjab Haryana High Court.

4.Adon Agro Commodities Limited vs Union of India in Criminal Writ

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Petition No. 616 of 2026, wherein the Hon'ble Bombay High Court held that a writ petition against summons is not maintainable.

5.State of Maharashtra v/s. Greatship (India) Limited reported in *2022 (382) E.L.T. 3(S.C.),* wherein the Hon'ble Supreme Court opined that the High Court had erred in entertaining the writ petition under Article 226 against the assessment order, bypassing the statutory remedies.

6.Skoda Auto Volkswagen India Private Ltd. vs. State of Uttar Pradesh & Ors., reported in *(2021) 5 Supreme Court Cases 795,* wherein the Hon'ble Supreme Court held that the law is well settled that Courts would not thwart any investigation.

7.Union of India v. Jain Shudh Vanaspati Ltd., reported in *(1996) 10 SCC 520,* wherein the Hon'ble Supreme Court of India ruled that a show-cause notice for a duty demand under Section 28 of the Customs Act, 1962 can be issued even after a clearance order has been passed under Section 47, without first needing to review or set aside the clearance order under revisional provisions.

8.Media Graphics & another vs commissioner of customs reported in *2017 SCC Online Had 38034.*

18.Heard the rival submissions on either side and perused the documents filed on behalf of the petitioner as well as the respondents Department.

19.Three summons were issued to Mr.Balaji, Mr.B.Rangarajan, Mr.L.Srinivasan and Mr.Mariselvam, pursuant to which their statements were recorded. Further, pursuant to the summons issued to Mr.Dharmalingam, who is the head of manufacturing, he appeared before the respondents on 30.09.2026.

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Mr.Mariselvam, who is the lead executive of the petitioner company, also appeared and gave a statement on 30.09.2026 in response to the summons dated 28.09.2026 issued to Mr.Dharmalingam and Mr.Mariselvam. Thereafter, summons was issued to the petitioner on 28.09.2026 and 05.10.2026. The petitioner submitted its reply to the said summons by way of email, followed by a legal notice dated 06.10.2026, stating that the present writ petitions had been instituted and that this Court, by order dated 25.09.2026, had directed the respondents not to take any coercive steps without following the due process of law.

20.The point that arises for consideration is only of twofold,

1.Whether there was any misdeclaration on the part of the petitioner? and

2.Whether the statements recorded by the respondents pursuant to the summons disclose any incriminating material warranting the summoning of the petitioner?

21.The question as to why the petitioner is required to appear pursuant to the summons appears to arise in the context of the notice issued in favour of the petitioner under the Income Tax Act. The issue is whether the product, which according to the petitioner, falls under CTH 7508 or CTI 7508 9090 has been correctly classified. The contention of the petitioner is that even assuming, for

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the sake of argument, that there was an incorrect declaration with regard to the classification of the goods, it will only lead to the imposition of penalty, whereas the claim of the respondents to summon the petitioner is highly unwarranted. According to the petitioner, the petitioner and its officials had appeared before the respondents pursuant to the summons issued as part of the inquiry and had submitted all the requisite documents. Even a perusal of the statements would show that they are only general in nature and, therefore, in the absence of any incriminating material to show or establish that any wilful misdeclaration or misinformation was made at the hands of the petitioner herein, the issuance of the summons is only intended to harass the petitioner. On examining the Order-in-Original dated 21.06.2017, the relevant discussion therein is extracted hereunder:

> *"The report from the SGS India Pvt. Ltd.(testing lab) shows that Nickel is the pre-dominant material 66.04%) in the turbine wheel(Raw castings) making it classifiable under Chapter 75. Since, report from lab was not clear on whether the items are raw product which further needs processing/machining or fully finished product, the Importer was requested to furnish full details of processing of the imported raw product in the manufacturing of the final product duly certified by the jurisdictional Central Excise authorities. The importer has submitted a detailed manufacturing process duly certified by jurisdictional C. Ex. Authority along with letter dated 04.05.2016 issued in C. No. IV/16/15/2016-LTG2 enclosing Process Verification Certificate dated 27.04.2016 issued by jurisdictional C.Ex. Ranipet confirming that the items are not*

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finished products but needs further processing/machining manufacture final product."

...

"Nickel Castings". As per said Circular, "Castings" which do not require any machining after the emergence from casting mould and which are ready to be used as machine parts, would have to be regarded as " articles having essential character of machine parts".

I find that the report from the SGS India Pvt. Ltd. shows that Nickel is the pre-dominant material (66.04%) in the turbine wheel(Raw castings) making it classifiable under Chapter 75. Since, report from lab was not clear on whether the items are raw product which further needs processing/machining or fully finished product, the importer was requested to furnish full details of processing of the imported raw product in the manufacturing of the final product duly certified by the jurisdictional Central Excise authorities. The Importer has submitted a detailed manufacturing process duly certified by jurisdictional C. Ex. Authority along with letter dated 04.05.2016 issued In C. No. IV/16/15/2016-LTG2 enclosing Process Verification Certificate dated 27.04.2016 issued by jurisdictional C.Ex. Ranipet confirming that the items are not finished products but needs further processing/machining to manufacture final product.

In view of above, it is clear now that the items under import merit classification under CTH 75089090 as "articles of Nickel".

Accordingly all 70 bills of entry mentioned above are finally assessed and accordingly bond details are credited. In view of above, I pass the following order.

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ORDER

I approve the classification of "Turbine wheel (other nickel castings) under CTH 75089090 and accordingly a total of 70 Bills of Entry referred In the above table In respect of M/s Turbo Energy Private Limited have been assessed finally."

22.Yet another argument advanced by Mr.Vijay Narayanan, learned senior counsel pertained to the payment of Rs.2 Crores made by the petitioner through challan No.53594025594, which, according to the petitioner, was made under compulsion. Further, the petitioner had made another payment of Rs. 10 Crores and a total sum of Rs.12 Crores was paid to the respondent, without any claim or rhyme. This Court is not inclined to go into the merits and rival contentions raised by the respondent with regard to the alleged forcible collection of the payment of Rs.12 Crores from the petitioner. In this regard, the learned senior standing counsel submitted that the petitioner, after making the payment, did not raise any objection at the time of making the payment, even though a sum of Rs.10 crores was paid on 18.09.2026. As regards the payment of Rs.10 crores and Rs.2 crores made by the petitioner, there is no material to show that the said amounts were paid under force or compulsion. However, the petitioner has subsequently retracted from the said position by contending that the amounts were paid under duress and due to the force exerted by the respondents herein. Though such a claim is not the subject matter of the present writ petitions, as the prayer in W.P.Nos.39324 of 2026 is only to direct

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the 1st respondent and its employees, officers and agents, including but not limited to Respondents 2 to 4, to refrain from taking any coercive or adverse action against the petitioner, including the seizure of goods lying at the petitioner's factory premises or compelling the petitioner to make payment of the alleged differential duty, interest and penalty as voluntary payments under Section 28(5) of the Customs Act, 1962, this Court is of the view that such an issue can be agitated and decided separately.

23.It is to be noted that by proceedings dated 09.11.2018, summons were issued under section 108 of the Customs Act by the Directorate of Revenue Intelligence on the very same issue. The investigation which was commenced, resulted in search operations conducted on 02.09.2026 and 03.09.2026. The primary contention of the respondents is that no machining was carried out by the petitioner and that the process was confined only to the shaft, which needs a thorough investigation, for which the petitioner was directed to appear pursuant to the summons, which are under challenge in the present writ petitions.

24.On examining the judgments relied upon by the petitioner, in the case of ***Sanmar Foundaries Limited Vs Commissioner of C. Ex. & Cus., Tiruchirappalli*** reported in ***2015 (325) E.L.T. 854 (Mad.)***, wherein the Division Bench of this Court held as follows:

"10. In National Organic Chemical Industries Limited v. Union of

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India reported in 2009 (16) S.T.R. 107 (Bom.), a Division Bench of the Bombay High Court echoed similar views.

11. In Century Metal Recycling Pvt. Ltd. v. Union of India - 2009 (234) E.L.T. 234 (P&H). a Division Bench of the Punjab and Haryana High Court was concerned both with the validity of the search and seizure as well as the validity of the claim of the assessee for refund of the amount deposited. Insofar as the first question was concerned, the Division Bench left it undecided in view of the undertaking given by the Department to complete the investigation within one month. But, insofar as the question of refund is concerned, the Division Bench of the Punjab and Haryana High Court held that unless there is an assessment and demand the department cannot appropriate the amount deposited. Even here, the Punjab and Haryana High Court came to the said conclusion without going into the question of whether the amount was deposited voluntarily or under coercion.

12. In Chitra Builders P. Ltd. v. Addl. Commissioner - 2013 (31) S.T.R. 515 (Mad.), Mr.Jaichandran, J. held that no tax could be collected from an assessee without an appropriate assessment.

13. From the above decisions relied upon by the learned senior counsel for the appellant, it is clear that the respondents cannot collect any duty, either voluntarily or under coercion, except by and under authority of law. As a matter of fact, the learned Standing Counsel for the respondents has no quarrel with this fundamental proposition of law that no tax can be levied or collected without the authority of law.

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15. In order to test the validity of the above contention, we may have to take note of sub-sections (1), (2), (3), (6) and (7) of Section 11A of the Act. Therefore, they are extracted as follows:

> *11A. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. (1) Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, for any reason, other than the reason of fraud or collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty,*
>
> *(a) the Central Excise Officer shall, within one year from the relevant date, serve notice on the person chargeable with the duty which has not been so levied or paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice;*
>
> *(b) the person chargeable with duty may, before service of notice under clause (a), pay on the basis of -*
>
> *(i) his own ascertainment of such duty; or*
>
> *(ii) the duty ascertained by the Central Excise Officer, the amount of duty along with interest payable thereon under section 11AA.*
>
> *(2) The person who has paid the duty under clause (b) of sub-section (1), shall inform the Central Excise Officer of such payment in writing, who, on receipt of such information, shall not serve any notice under clause (a) of that sub-section in respect of the duty so paid or any penalty leviable under the provisions of this Act or the rules made thereunder.*

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(3) Where the Central Excise Officer is of the opinion that the amount paid under clause (b) of sub-section (1) falls short of the amount actually payable, then, he shall proceed to issue the notice as provided for in clause (a) of that sub-section in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of one year shall be computed from the date of receipt of information under sub-section (2).

....

(6) Any person chargeable with duty under sub-section (5) may before service of show cause notice on him, pay the duty in full or in part, as may be accepted by him along with the interest payable thereon under Section 11AA and penalty equal to one per cent. of such duty per month to be calculated from the month following the month in which such duty was payable, but not exceeding a maximum of twenty-five per cent of the duty, and inform the Central Excise Officer of such payment in writing.

(7) The Central Excise Officer, on receipt of information under sub-section (6), shall

(i) not serve any notice in respect of the amount so paid and all proceedings in respect of the said duty shall be deemed to be calculated where it is found by the Central Excise Officer that the amount of duty, interest and penalty as provided under sub-section (6) has been fully paid;

(ii) proceed for recovery of such amount if found to be short-paid in the manner specified under sub-section (1) and the period of one year shall be computed from the date of receipt of such information"

16. A careful look at sub-sections (1) to (3) of Section 11A would show that for the invocation of clause (b) of sub-section (1), the following conditions are to be satisfied:

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(i) Any duty of excise is found to have been not levied or paid or short-levied or short-paid or erroneously refunded, for any reason other than fraud, collusion, wilful misstatement or suppression of facts or contravention of any of the provisions of the Act and the rules, with an intent to evade payment of duty.

(ii) The Excise Officer should, within one year from the relevant date, service notice upon the person chargeable with duty which has not been levied or paid or short-levied or short-paid or to whom refund was erroneously made.

(iii) But, before service of a notice under clause (a), the person chargeable with 'duty may pay the amount of duty along with interest on the basis of either his own ascertainment of such duty or the duty ascertained by the Central Excise Officer.

(iv) Once payment is made under clause (b) of sub-section (1), the Excise Officer shall not serve any notice under clause (a). However, if the amount paid under clause (b) of sub-section (1) falls short of the amount actually payable, then he can proceed to issue the notice as provided in clause (a).

17. A careful look at sub-sections (1) to (3) of Section 11A would show that to qualify as a payment made under Section-A(1)(b), there must either be an own ascertainment of such duty or the duty ascertained by the Central Excise Officer. What is important to note in Section 11A(1) (b) is the expression "ascertainment". For a payment to come within the parameter of Section 11A (1)(b), the same must have been made either on the basis of own ascertainment by the assessee or on the basis of an ascertainment by the Central Excise Officer. In other words, if there is no ascertainment either by the assessee or by the Central Excise Officer, the Department cannot contend that a payment made by the assessee would fall within the scope of Section 11A(1)(b). But, in the case on hand, it is not pleaded either in the counter affidavit

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filed by the department before the learned Single Judge or in any other document that there was any ascertainment at any point of time, either by the assessee or by the Central Excise Officer. Therefore, the payment of Rs. 7.53 crores made by the appellant, either on their own accord or under threat of coercion, will not quality as a payment made in terms of Section 11A(1)(b).

...

20. In the case on hand, there was nothing except an inspection and verification. It was never the case of the respondents that they found out duty evasion in the course of investigation and that when they were ready to serve a notice under sub-section (5), the appellant made payment in terms of sub-section (6). Had this been their contention, the respondents ought to have shown the break-up of the amount of Rs. 7.53 crores into (i) duty; (2) interest; and (iii) penalty. In the absence of any of these details, the respondents cannot contend that the payment was in terms of sub-section (6). As a matter of fact, sub-section (7) is somewhat similar to sub-section (2) and it prohibits the Central Excise Officer from serving any notice in respect of the amount paid. But, in the case on hand, a notice has been served after the learned Single Judge disposed of the writ petition, with liberty to the respondents. Therefore, it is clear that the amount of Rs. 7.53 crores paid by the appellant, will not fall either under Section 11A(1)(b) or under Section 11A(6). If it will not fall under any of these two provisions, it cannot be taken to be a payment made in relation to any statutory provision. Therefore, irrespective of whether the amount was paid under coercion or voluntarily, the respondents have no business to retain the same. Hence the contention of the learned Standing Counsel

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for the respondents that the payment was authorised by law has to be stated only to be rejected.

21. The writ appeal is allowed, the order of the learned Judge is set aside and the writ petition filed by the appellant is allowed, directing the respondents to refund the amount of Rs. 7.53 crores, collected from the appellant. We give a time of four weeks to the respondents to make payment of the amount to the appellant, from the date of receipt of a copy of this order. If the respondents fail to make payment within four weeks from the date of receipt of a copy of this order, the respondents will become liable to pay interest at 6% per annum on the said amount from the date of expiry of the time for payment stipulated herein. No costs. Connected M.P. (MD) No. 1 of 2014 is closed."

25.By referring to the above judgment, the learned senior counsel for the petitioner submitted that as against the said judgment, no appeal was filed and as decided in the above case, if any amount is recovered, irrespective of whether it was paid under coercion or voluntarily, the respondents have no business to retain the same. Hence the contention of the learned standing counsel for the Respondents that the payment was authorised by law, is liable to be rejected. Against the said judgment, the Department filed an appeal, which was dismissed at the stage of condonation of delay of 282 days. Therefore the issue has attained finality.

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26.Reference was also made to the circular issued by the Government of India, Ministry of Finance on 04.02.2015, which contains the instructions regarding the issuance of summons in customs matters. Another judgment relied upon by the petitioner in the case of ***Century Plyboards (India) LTD. Vs Union of India***, reported in ***2022 (381) ELT 755 (Gau.),*** wherein it was held as follows:

> *"4. Dr. A Saraf, learned senior counsel for the petitioner relies upon a circular bearing C.B.E & C Letter F. No. 208/122/89-CX.6, dated 13.10.1989 of the Central Board of Excise and Customs, which provides for an instruction to the departmental authorities not to summon the Managing Director/Directors of any Company for enquiry. The relevant portion of the circular is extracted below:*
>
> > *"Complaints have been received from the trade that in some of the Collectorates summons under Section 14 of the Central Excises & Salt Act, 1944 are being issued to the Managing Directors & other high officers with a view to enforce recovery of dues which are under dispute. Action under this Section is to be taken only as a last resort in cases where assessees are not cooperating or investigations are to be completed expeditiously. This Section should not be used for harassing the top management for forcing them to pay up demands which are disputed by them. For recovery of demands normal procedure under the law should be followed. If any instance of issue of summons to Managing Directors & other Directors without justification is noticed, a serious view will be taken by the board. Collectors will be held personally responsible for enforcing these instructions in their charges."*
>
> *7. In the circumstance, we dispose of this writ petition by directing the departmental authorities issuing the summons under Section 108 of the Act of 1962 not to issue summons directly to the Managing Director of the petitioner Company and on the other hand to issue it to an authorized*

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representative of the Company in terms of the provisions of the Circular dated 10.10.1989. The summons to be issued to the petitioner Company shall henceforth be done in the required manner by not directly requiring the Managing Director to be summoned and to act in accordance with the law provided in the circular dated 13.10.1989 "

27.And in the case of ***Ganesh Chandra Mrig Vs Superintendent (Prev.), Commissionerate of Central Excise, Customs and Service Tax, Bhubaneswar – II*** reported in ***2010 (5) TMI 912,*** the Hon'ble Orissa High Court held as follows:

"13. We find no reason as to why the opp. party after conducting search and seizure in the business premises of the Company is insisting upon personal appearance of the Managing Director who has specifically informed that he is stationed at New Delhi and is not looking after the affairs of the Company due to old age. The purpose for which summons under Section 14 of the Act under Annexures-1, 7 and 9 were issued to the petitioner, as revealed from those summons, is that the opposite party believes that the petitioner was in possession of certain documents and records that were material for the purpose of enquiry with regard to the allegation of violation of provisions of the Central Excise Act, 1944 and the Rules framed thereunder against the Company. The summons as well as the counter is silent as to any particular fact and/or document and record that is material for the purpose of enquiry is in possession of the petitioner.

In course of hearing, learned counsel appearing for the Department also could not satisfy us by showing any specific

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reason for issuing summons to the petitioner-Managing Director. Mr.Ray also failed to satisfy as to whether the Managing Director is in possession of the books of account, documents of the Company that he is hiding/concealing from the Department. It is, therefore, not sufficient to make a statement that personal appearance of the Managing Director is necessary for which summons under Section 14 has been issued to him to appear personally. It appears, the opp. party is more interested in the personal appearance of the Managing Director than to apply his mind to the books of account, documents seized in course of search and seizure and the documents produced thereafter to find out the amount/quantum of Excise Duty evaded, if any. In this context, we feel it necessary to refer to the Circular bearing C.B.E. & C Letter F.No.208/122/89-CX.6, dated 13.10.1989 though it has been issued in a different factual scenario, i.e., with regard to collection of arrear dues. The relevant portion of the said Circular which will throw light on the present context is as follows:-

> *"Complaints have been received from the trade that in some of the Collectorates summons under Section 14 of the Central Excises and Salt Act, 1944 are being issued to the Managing Directors and other high officers with a view to enforce recovery of dues which are under dispute. Action under this section is to be taken only as a last resort in cases where assesses are not cooperating or investigations are to be completed expeditiously. This section should not be used for harassing the top management for forcing them to pay up demands which are disputed by them. For recovery of demands normal procedure under the law should be followed. If any instance of issue of summons to Managing Directors and other Directors without justification is noticed, a serious view will be taken by the Board. Collectors will be held*

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personally responsible for enforcing these instructions in their charges."

The Gujarat High Court in A.S. Corporation Vs. Union of India, 2008 (223) E.L.T. 26 (Guj.) while dealing with an issue relating to summon under Section 14 of the Act held that the petitioner not be issued any further summons in relation to same subject matter unless and until respondent-Department is in possession of any specific evidence requiring presence of the petitioner."

28.He further relied upon the judgment in the case of ***Vodafone Essar South Ltd., Vs Union of India*** reported in ***2009 (237) ELT 35 (Bom.)***, wherein the Division Bench of Bombay High Court held as follows:

"21. The contention of the revenue that the petitioners have voluntarily paid the amount towards the differential duty is equally unacceptable, because, in the covering letters all dated 19-12-2008 the petitioners have specifically stated that the amount is being paid in view of the threat given by the D.R.I. officers to arrest the directions / employees if the differential duty is not paid. When the goods have been cleared on payment of duty as assessed under Heading 85.44 which is supported by the order passed by the Commissioner of Customs (A), there is no reason for the footing the petitioners to pay voluntarily differential duty on that the goods were classifiable under Heading 90.01 and not under Heading 85.44 even though the assessment under Heading 85.44 is neither set aside nor any show cause notice is issued in that behalf. The fact that the search took place on 18-12-2008 and the fact that on 19-12-2008 the petitioners paid the amount of Rs.1,83,46,210/- specifically stating that in view of the threat to arrest the

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directors / employees, clearly belies the contention of the revenue that the amounts were paid voluntarily. Moreover, the petitioners immediately thereafter filed the present writ petition on 24-12-2008 stating that the amount has not been paid voluntarily and that the amount collected under threat and coercion is liable to be refunded ”

29.As discussed above, the nature of the amount paid by the petitioner is covered by all these judgments, which refer to the amount paid by the petitioner, viz., the sum of Rs.12 crores.

30.The learned counsel for the respondents relied upon the following judgments:

1.Union of India v. Padam Narain Aggarwal reported in *(2008) 13 SCC 305* wherein the Hon’ble Supreme Court refused to interfere at the stage when Customs authorities had merely issued summons under Section 108.

2.Ramesh Chandra Mehta v. State of W.B. reported in *AIR 1970 SC 940* wherein the Hon’ble Supreme Court held that a person called upon to make a statement before the Customs Authorities cannot be said to be an accused of an offence

3.CRA No.11-DB of 2010 titled 'Fatima Bibi Vs. Inspector of Customs' before Hon'ble Punjab Haryana High Court

4.Adon Agro Commodities Limited vs Union of India in Criminal Writ Petition No. 616 of 2026 wherein Bombay HC held that the writ petition against summons is not maintainable

5.State of Maharashtra v/s. Greatship (India) Limited reported in *2022 (382)*

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E.L.T. 3(S.C.) wherein Supreme Court opined that the High Court had erred in entertaining the writ petition under Article 226 against the assessment order, bypassing the statutory remedies.

6.Skoda Auto Volkswagen India Private Ltd. vs. State of Uttar Pradesh & Ors. - 2020 wherein Supreme Court held that the law is well settled that Courts would not thwart any investigation

7.Union of India v. Jain Shudh Vanaspati Ltd., reported in *1996 (86) E.L.T. 460 (S.C.) (1996) 10 SCC 520* wherein, the Supreme Court of India ruled that a show-cause notice for a duty demand under Section 28 of the Customs Act, 1962 can be issued even after a clearance order has been passed under Section 47, without first needing to review or set aside the clearance order under revisional provisions.

8.Media Graphics & another vs commissioner of customs reported in *2017 SCC Online Had 38034.*

31.In the case of *Media Graphics and another Vs. Commissioner of Customs* reported in *2017 SCC OnLine Mad 38034,* it was held as follows:

> *"13. The challenge in the present writ petitions is to summons issued under section 108 of the Act. The petitioner does not dispute the authority or jurisdiction of the investigating agency namely, the DRI to summon the petitioner. The challenge to the impugned summons is on very limited ground stating that no useful purpose would be served by directing the petitioner to appear before the second respondent, inasmuch as, already the petitioner has appeared and statement has been recorded. Much earlier, the third respondent inspected the business premises of the petitioner and has also recorded statement and seized documents, mobile phones, computer hard disks etc., and once again to summon the petitioner*

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for the very same purpose is only with a view to harass the petitioner and some how make the petitioner accept that he/they has/have under- valued the value of the imported goods.

14. In Commissioner of Customs v. M. M. Exports reported in (2007) 212 ELT 165 (SC), it was held that the High Court should not interfere at the stage when the Department issues summons except in exceptional cases, and it is always open to the person summoned to raise all contentions by appearing before the Department in person or through authorized representative.

15. In Union of India v. Rajnish Kumar in Special Leave Criminal Appeal No. 30 of 2010, the hon' ble Supreme Court took note of the decision in the case of Dukhishiyam Benupani, Asstt. Director, Enforcement Directorate (FERA) v. Arun Kumar Bajoria reported in (1998) 1 SCC 52, and refused to interfere with the summons issued by DRI and while allowing the appeal filed by Union of India (supra), left it open to the DRI to issue appropriate summons to the respondent therein for his appearance at the appropriate place.

16. Thus, the legal position being that a summons should not be interdicted by a writ court, especially when, the authority, who has issued summons, has jurisdiction to do so. The petitioner's apprehension is that if he is compelled to appear before the second respondent for the second time, he would be compelled to accept in writing that they have under-valued the goods and, therefore, the petitioner seeks for quashing the summons. The first time, the petitioner was summoned was after the search conducted on February 8, 2016, is on June 22, 2016, for examination of the hard disks. Subsequently, summons dated December 7, 2016 was issued to appear on December 19, 2016. The petitioner has appeared and

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his statement has been recorded under section 108 of the Act. On the very same day, (i.e.) the date on which he appeared, before the second respondent (i.e.) on December 19, 2016, one more summons was issued (impugned summons) directing him to appear on January 6, 2017. In the counter-affidavit, it has been stated that the petitioner is required to appear, as he needs to be confronted with the documents which have been retrieved from the computer hard disk. However, in the impugned summons, the relevant column which is required to be filled up to make known to the petitioner the purpose for which he is summoned, has been left blank. Therefore, strictly speaking, the petitioner was unaware for what purpose he has been directed to appear on January 6, 2017. The purpose of the enquiry as mentioned in the preamble to the impugned summons is identical to first summons, (i.e.,) "under-valuation of printing machinery". In the first summons, dated December 7, 2016, the petitioner was directed to produce all the documents, sales invoice, account ledger, bank statements from 2011-12 to 2016-17.

17. According to the petitioner, he has fully complied with the requirement and furnished the necessary document. However, I find that in the impugned summons, there is no direction to the petitioner to produce any documents, which is under his control. Thus, if the petitioner's presence is required for further questioning pertaining to certain information, which they have subsequently secured, the same should have been made known in the impugned summons. However, this may not invalidate the summons by itself, but can be stated to be in violation of the principles of natural justice. As mentioned earlier, the summons cannot be quashed as no investigation can be interfered or thwarted at the very

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threshold. However, the petitioner is entitled to protection of his life and liberty and he is entitled to know the purpose for which he is being summoned, which has not been mentioned in the impugned summons. To that extent, this court is inclined to grant relief to the petitioner.

18. Thus, for the above reasons, while declining to set aside the impugned summons, there will be a direction to respondents Nos. 2 and 3 to issue fresh summons clearly indicating as to what purpose, the petitioner is being summoned and what are the documents, which he is required to produce, while attending the hearing before the third respondent."

32.In the case of *Union of India Vs Padam Narain Aggarwal* reported in *(2008) 13 SCC 305*, it was held as follows:

"56. This section does not contemplate magisterial intervention. The power is exercised by a Gazetted Officer of the Department. It obliges the person summoned to state truth upon any subject respecting which he is examined. He is not absolved from speaking truth on the ground that such statement is admissible in evidence and could be used against him. The provision thus enables the officer to elicit truth from the person examined. The underlying object of Section 108 is to ensure that the officer questioning the person gets all the truth concerning the incident."

33.All the judgments relied upon by the Respondents are with regard to the scope and exercise of the power of arrest, seizure and issuance of summons. The judgments cited by respondents would only show that the respondents are

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at liberty to proceed with the investigation by exercising the powers under Section 108 of the Customs Act and that the said power is unbridled.

34.While examining the contention of the learned counsel for the petitioner as well as the learned counsel for the respondent, though it is the case of the petitioner that the Customs Tariff Heading 7508, which is described *"other articles of nickel"* and Customs Tariff item 7508 9090, which covers *"other articles of nickel and nickel alloy"*, carry a rate of duty described as "Free". However, in Customs tariff Heading 8414 it specifically covers air or vacuum pumps, air or other gas compressors and fans, ventilating or recycling hoods incorporating a fan, whether or not fitted with filters and gaslight biological safety cabinets, whether or not fitted with filters. The reference with regard to tariff item 8414 9090 is at the applicable rate of duty is 7.5% per kg. Examining the explanation note to Headings 73.25 and 73.26 the explanation gains a significance as stated in paragraph 11 of the above order. In the circular No.225/59/96-CX dated 01.07.1996, where it is stated that "*those castings moulds viz., precision castings and/or are, as such, ready to be used as machine parts would be regarded as articles having essential character of machine parts and would be classified under Ch 84, 85, 86, 87 etc.,"* It has to be examined in the light of the panchanama, where it has been stated as it was recorded that *"imported turbine wheel does not undergo rough rough machining and also that these imported turbine wheels are precision cast"*. It is a specific case of

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the respondents that the importer had referred to the circular but had not revealed that the goods were precision cast, which according to the respondents, clearly points to wilful misstatement and suppression of facts. Therefore taking into consideration of the objections raised by the respondents with regard to the classification of tariff of both the products, which has been claimed by the petitioner disputed by the respondent, I am not inclined to interfere with the orders passed by the respondents.

35.The prayer in W.P.No.39324 of 2026 is with regard to seeking a direction against the 1st respondent. The said prayer cannot be considered in the light of the powers vested with the respondents under section 108 of the Customs Act. The consequential prayer seeking to restrain the respondents from compelling the petitioner to make payment of the alleged differential duty, interest and penalty as voluntary payments under Section 28(5) of the Customs Act 1962, also cannot be considered as it is only a consequential action, pursuant to the decision to be taken at the later stage and therefore, this writ petition is dismissed as devoid of merits.

36.Similarly, With regard to the prayer in W.P.No.39329 of 2026, seeking direction to respondents 2 to 4 to furnish copies of the complete and unedited video footage and recordings pertaining to the search and seizure proceedings, investigation and statements recorded from the employees and the

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petitioner, the same is premature, as all these details can be given only after completion of the investigation and any direction, if considered at this stage, would not only premature, but would also amount to direct interference with the investigation. Therefore, the said prayer is also declined and this writ petition is also dismissed as devoid of merits.

37.Accordingly, these writ petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

19.11.2026

Index: Yes
Speaking order
Neutral Citation: Yes

sai

To

1.The Chairman, Central Board of Indirect taxes and customs,
Ministry of Finance, Department of Revenue,
Government of India, New Delhi

2.Director of Revenue Intelligence,
Mumbai Zonal Unit, Directorate of Revenue Intelligence, 5th Floor, 13, Sir Vithaldas Thackersay Marg, New Marine Lines, Mumbai 400 020

3.Senior Intelligence officer, Mumbai Zonal unit,
Directorate of Revenue Intelligence,
5th Floor, 13, Sir Vithaldas Thackersay Marg,
New Marine Lines, Mumbai 400 020

4.Intelligence officer, Mumbai Zonal unit,
Directorate of Revenue Intelligence,
5th Floor, 13, Sir Vithaldas Thackersay Marg,
New Marine Lines, Mumbai 400 020

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N.SENTHILKUMAR J.

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Pre-delivery common order made in
WP No.39324 of 2026 & WP No.39329 of 2026
and
WMP No.46476 of 2026, WMP No.46480 of 2026

Dated: 19.11.2026

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