IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 2ND DAY OF FEBRUARY 2015/13TH MAGHA, 1936

WP(C).No. 2803 of 2015 (A)

PETITIONER :

M/S.CHALISSERY KIRANA MERCHANT,
XII/163/A, CHALISSERY(P.O), PALAKKAD DISTRICT,
REPRESENTED BY ITS MANAGING PARTNER SRI.BASHEER M.A.

BY ADVS.SRI.DEVAN RAMACHANDRAN
SRI.T.RAJASEKHARAN NAIR
SRI.ASWIN GOPAKUMAR
SRI.K.M.ANEESH
SRI.ADARSH KUMAR

RESPONDENT(S):

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1. UNION OF INDIA,
REPRESENTED BY THE SECRETARY, DEPARTMENT OF REVENUE,
MINISTRY OF FINANCE, GOVERNMENT OF INDIA, NORTH BLOCK,
NEW DELHI - 110 001

2. THE DEPUTY COMMISSIONER OF CUSTOMS (SIIB),
SPECIAL INTELLIGENCE AND INVESTIGATION BRANCH,
CUSTOM HOUSE, WILLINGDON ISLAND, COCHIN - 682 009

R1 BY ADV.SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R2 BY ADV. SRI.JOHN VARGHESE,SC,CEN.BOARD OF EXCISE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sts

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APPENDIX

PETITIONER(S)' EXHIBITS

P1- **TRUE COPY OF THE PURCHASE ORDER DATED 25.10.2014 FOR SUPPLY OF 100 METRIC TONNES OF ARECA NUT OF PAKISTANI ORIGIN.**

P2(A)- **TRUE COPY OF THE COMMERCIAL INVOICES DATED 3.12.2014**

P2(B)- **TRUE COPY OF THE COMMERCIAL INVOICES DATED 09.12.2014**

P2(C)- **TRUE COPY OF THE COMMERCIAL INVOCES DATED 11.12.2014**

P3(A)- **TRUE COPY OF THE PACKING LISTS DATED 3.12.2014**

P3(B)- **TRUE COPY OF THE PACKING LISTS DATED 9.12.2014**

P3(C)- **TRUE COPY OF THE PACKING LISTS DATED 11.12.2014**

P4(A)- **TRUE COPY OF THE BILLS OF LADING ISSUED BY THE CARRIER**

P4(B)- **TRUE COPY OF THE BILLS OF LADING ISSUED BY THE CARRIER**

P4(C)- TRUE COPY OF THE BILLS OF LADING ISSUED BY THE CARRIER

P5(A)- **TRUE COPY OF THE CERTIFICATES OF ORIGIN DATED 19.12.2014 ISSUED BY THE COMPETENT AUTHORITY IN PAKISTAN**

P5(B)- **TRUE COPY OF THE CERTIFICATES OF ORIGIN DATED 19.12.2014 ISSUED BY THE COMPETENT AUTHORITY IN PAKISTAN**

P5(C)- **TRUE COPY OF THE CERTIFICATES OF ORIGIN DATED 19.12.2014 ISSUED BY THE COMPETENT AUTHORITY IN PAKISTAN**

P6(A)- **TRUE COPY OF THE BILLS OF ENTRY FOR CLEARANE OF THE GOODS FOR HOME CONSUMPTION**

P6(B)- **TRUE COPY OF THE BILLS OF ENTRY FOR CLEARANCE OF GOODS FOR HOME CONSUMPTION**

P6(C)- **TRUE COPY OF THE BILLS OF ENTRY FOR CLEARANCE OF THE GOODS FOR HOME CONSUMPTION**

P7- **TRUE COPY OF THE MAHAZAR DATED 7.1.2015**

P8- **TRUE COPY OF THE REQUEST LETTER DATED 19.1.2015 MADE BY THE PETITIONER TO THE 2ND RESPONDENT FOR RELEASE OF THE GOODS**

P9- **TRUE COPY OF THE CORRESPONDENCE.**

2/-

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P10(A)-	TRUE COPY OF PHYTOSANITARY CERTIFICATES DATED 16.12.2014 ISSUED BY THE COMPETENT AUTHORITY OF THE GOVERNMENT OF PAKISTAN
P10(B)-	TRUE COPY OF PHYTOSANITARY CERTIFICATES DATED 16.12.2014 ISSUED BY THE COMPETENT AUTHORITY OF THE GOVERNMENTOF PAKISTAN
P11(A)-	TREU COPY OF THE CERTIFICATES OR ORIGIN DATED 26.12.2014 ISSUED BY THE KARACHI CHAMBER OF COMMERCE AND INDUSTRY, PAKISTAN
P11(B)-	TRUE COPY OF THE CERTIFICATES OR ORIGIN DATED 26.12.2014 ISSUED BY THE KARACHI CHAMBER OF COMMERCE AND INDUSTRY, PAKISTAN
P12-	TRUE COPY OF THE ORDER DATED 22.1.2015 PASSED BY THE 2ND RESPONDENT

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

sts

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No. 2803 of 2015 (A)

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Dated this the 2nd day of February, 2015

JUDGMENT

The petitioner, who had imported a consignment of arecanut from Pakistan, had sought clearance of the consignment at the concessional rate of duty, as applicable to imports effected under the South Asian Free Trade Area Agreement (for short, 'SAFTA'). The respondent Customs authorities, however, found certain gunny bags in the containers that were imported by the petitioner, which gave rise to a suspicion that the goods in question could be of Indonesian origin, and not of Pakistani origin as declared, for the purposes of claiming the concessional rate of duty. Under those circumstances, when the petitioner sought a release of the goods, the respondents permitted only a provisional release on compliance with the conditions in Ext.P12 notice that was issued to the petitioner. The said conditions read as follows :

1. Execution of bond for Assessable Value;
2. Payment of duty in terms of SAFTA Notification;
3. Payment of 20% of differential duty [on tariff rate];
4. Cash deposit/BG from a Nationalized Bank towards remaining portion of differential duty.

2. In the writ petition, the petitioner is essentially aggrieved by condition No.4, to the extent it insists on a cash deposit/bank guarantee from a Nationalised Bank towards the remaining

portion of the differential duty, as a condition for the release of the goods. It is the contention of the petitioner that the goods being perishable in nature, it is essential that they are permitted clearance at an early date, but the insistence of the respondents for exorbitant amounts by way of bank guarantee would render futile the attempts of the petitioner for an expeditious clearance of the consignment.

3. I have heard Sri.Devan Ramachandran, learned counsel appearing for the petitioner and Sri.John Varghese, learned Senior Standing counsel appearing for the respondents.

4. On a consideration of the facts and circumstances of the case and also the submissions made across the Bar, I am of the view that there is merit in the contention of the petitioner, that the imports in question were effected after complying with the procedural requirements of the SAFTA notification, which enabled the petitioner to claim clearance of the goods at concessional rate of duty. The relevant documents, such as the certificate of origin issued by the Karachi Chamber of Commerce and Industry/Trade Development Authority of Pakistan, and the invoice that accompanied the consignment, clearly indicated that the goods were of Pakistani origin. As against this, the only material relied upon by the Customs authorities, to doubt the

correctness of the aforesaid certificates and invoices, is the detection of certain gunny bags in the containers that held the imported goods, which gave rise to a suspicion that the goods could have been sourced from Indonesia. At this stage of the proceedings, I am of the view that the certificates issued by the Karachi Chamber of Commerce and Industry/Trade Development Authority of Pakistan should be given due weightage insofar as they are certificates issued in terms of a notification that was issued to give effect to a multilateral agreement entered into between South Asian Countries, to which both India and Pakistan were signatories. I am, therefore, of the view that the goods can be permitted a provisional clearance on the petitioner executing a bond for the assessable value, paying duty on the consignment in terms of the SAFTA notification, and paying 35% of the differential duty (on tariff rate) in respect of the consignment that has been imported. The petitioner shall also furnish a bond, without any surety or security, in favour of the respondents towards the remaining portion of the differential duty. I make it clear that, if the petitioner complies with the aforesaid conditions, the respondents shall release the consignment of goods imported by the petitioner under Ext.P6 series of bills of entry, forthwith and without any further delay.

5. I must hasten to add that, the observations in this judgment with

regard to the certificates relied upon by the petitioner are only for the purposes of arriving at a prima facie view with regard to the entitlement of the petitioner for a provisional release of the goods and shall not in any way affect the findings of the respondents, in the adjudication that is to follow.

The writ petition is disposed with the aforesaid directions.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/02/02/