IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

WP(C).No. 5585 of 2015 (W)

PETITIONER :

M/S. DOVES INTERNATIONAL
REPRESENTED BY ITS PROPRIETOR,
UMESH KUMAR PARASHAR
40/8 ,EAST PATEL NAGAR, NEW DELHI.

BY ADVS.SRI.P.RADHAKRISHNAN
SRI.MADHU RADHAKRISHNAN
SRI.M.D.JOSEPH

RESPONDENT(S) :
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1. UNION OF INDIA
REPRESENTED BY ITS SECRETARY
MINISTRY OF HEALTH & FAMILY WELFARE
GOVERNMENT OF INDIA, NEW DELHI - 110 001.

2. SUPERINTENDENT OF CUSTOMS (SIIB),
OFFICE OF THE COMMISSIONER OF CUSTOMS
WILLINGDON ISLAND, KOCHI - 682 009

3. COMMISSIONER OF CUSTOMS
CUSTOMS HOUSE, WILLINGDON ISLAND, COCHIN 682 009

4. JOINT DIRECTOR,
DIRECTORATE OF REVENUE INTELLIGENCE, VILAKKUNNEL
XL/522, KAITHOTHU ROAD, PALARIVATOM
COCHIN - 682 025.

R1 BY ADV. SRI.N.NAGARESH, ASGI
R2 & R3 BY ADVS. SRI.JOHN VARGHESE, SC
SRI.THOMAS MATHEW NELLIMOOTTIL, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).No. 5585 of 2015 (W)
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APPENDIX

PETITIONERS' EXHIBITS :

EXHIBIT P1:- TRUE COPY OF BILL OF ENTRY DATED 29-12-2014 NO. 7841168 ALONG WITH IMPORTANT DOCUMENTS FILED BY THE PETITIONER.

EXHIBIT P2:- TRUE COPY OF THE BILL OF ENTRY DATED 29-12-2014 NO. 7841169 FILED BY THE PETITIONER.

EXHIBIT P3:- TRUE COPY OF THE BILL OF ENTRY DATED 29-12-2014 NO. 7841171 FILED BY THE PETITIONER.

EXHIBIT P4:- TRUE COPY OF THE BILL OF ENTRY DATED 29-12-2014 NO. 7841174 FILED BY THE PETITIONER.

EXHIBIT P5:- TRUE COPY OF THE EXAMINATION ORDER DATED 30-12-2014 FOR EXAMINAION OF EXT. P1.

EXHIBIT P6:- TRUE COPY OF THE EXAMINATION ORDER DATED 30-12-2014 FOR THE EXAMINAION OF EXT. P2.

EXHIBIT P7:- TRUE COPY OF THE EXAMINATION ORDER DATED 29-12-2014 FOR THE EXAMINAION OF EXT. P3.

EXHIBIT P8:- TRUE COPY OF THE EXAMINATION ORDER DATED 30-12-2014 FOR THE EXAMINAION OF EXT. P4.

EXHIBIT P9:- TRUE COPY OF THE PLANT QUARANTINE CERTIFICATE DATED 13-01-2015 (IMPORT RELEASE ORDER).

EXHIBIT P10:- TRUE COPY OF THE PLANT QUARANTINE CERTIFICATE DATED 13-01-2015 (IMPORT RELEASE ORDER)

EXHIBIT P11:- TRUE COPY OF THE PLANT QUARANTINE CERTIFICATE DATED 13-01-2015 (IMPORT RELEASE ORDER)

EXHIBIT P12:- TRUE COPY OF THE PLANT QUARANTINE CERTIFICATE DATED 13-01-2015 (IMPORT RELEASE ORDER)

EXHIBIT P13:- TRUE COPY OF THE JUDGMENT IN WPC 2275/2015 DATED 28-1-2015.

EXHIBIT P14:- TRUE COPY OF THE REVIEW PETITION FILED BY THE 3RD RESPONDENT IN WP 2275/2015.

EXHIBIT P15:- TRUE COPY OF THE SEIZURE MAHAZAR DRAWN BY THE OFFICERS OF THE DRI.

(Contd...)

EXHIBIT P16:- TRUE COPY OF THE APPLICATION FILED FOR PROVISIONAL RELEASE OF THE CARGO DATED 11-2-2015.

EXHIBIT P17:- TRUE COPY OF THE ORDER OF PROVISIONAL ASSESSMENT OF DUTY AND RELEASE ORDER DATED 18-2-2015.

EXHIBIT P18:- TRUE COPY OF THE PHOTOGRAPH TAKEN OF THE GUNNY BAGS FOUND IN THE CONSIGNMENT COVERED UNDER EXT. P1 TO EXT. P4.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.5585 of 2015

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Dated this the 2nd day of March, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P17 order passed by the 2nd respondent, whereby the 2nd respondent has directed the petitioner to comply with certain conditions for the provisional release of consignments of arecanut, that were imported by the petitioner from Srilanka. In the writ petition, the petitioner is aggrieved by the condition requiring payment of 35% of the differential duty (on tariff date), stipulated as one of the conditions for the provisional clearance of the consignments imported by him. The facts in the writ petition would disclose that the petitioner had imported four consignments of arecanut from Srilanka, under cover of four bills of entry, all dated 29.12,2014. While seeking a clearance of the consignments, the petitioner had sought for the benefit of the concessional rate of customs duty, as applicable to arecanut imported from Srilanka in terms of Notification No.26/2000 dated 01.03.2000, which gave effect to the Indo Srilankan Foreign Trade Agreement entered into between the Governments of India and Srilanka. The customs authorities, however, denied the benefit of the concessional rate of duty as applicable under the said Notification, to the consignments imported by the petitioner, inter alia, on the ground that an inspection of the consignments revealed the presence of certain gunny bags, which suggested that the goods that were imported were not actually sourced from Srilanka, but from other countries. Under these circumstances, the customs authorities insisted on the petitioner clearing the goods only provisionally, subject to the condition that, apart from paying duty at the concessional rate as applicable under the notification, the petitioner would also pay 35% of the differential duty which, according to the customs authorities, was payable on the consignments, and complying with the other conditions such as submitting a bond for the differential duty etc. It is this condition, that the petitioner takes objection to, and is the basis of the challenge in the writ petition.

2. I have heard Sri.Madhu Radhakrishnan, the learned counsel for the petitioner and Sri.John Varghese, the learned Standing counsel for the respondents. Sri.John Varghese, would point out that the respondent authorities had sufficient material to suspect that the goods, that were imported by the petitioner, were not of Srilankan origin, going by the test laid down in the Rules to determine the Country of Origin for the purposes of the

Notification in question. According to him, the customs authorities had reason to believe that the goods niether originated in Srilanka nor were goods, in respect of which substantial value addition had been brought about in Srilanka. For this reason, he would submit that the goods are prima facie not entitled to the concessional rate of duty as envisaged in the notification. He would contend that, in order to protect the interest of the revenue, a provisional release could be permitted only subject to the petitioner depositng substantial amounts towards the differential duty that would be payable, in case the benefit of the Notification was not available.

3. Considering the submission of counsel on either side, I note that, in the instant case, the petitioner had submitted documents to substantiate his contention with regard to the origin of the goods from Srilanka. While he had filed a declaration to that effect, along with the bills of entry that were filed, he has also placed reliance on Ext.P19 letter, that was issued by the High Commission of the Democratic Socialistic Republic of Srilanka and addressed to the Commissioner of Customs, Cochin, confirming the issuance of the certificates of origin in respect of the goods that were imported by the petitioner. Under the said circumstances, I am of the view that, the petitioner must be seen as having

succeeded in discharging his prima facie burden in establishing that the goods qualified for the benefit of the concessional rate in terms of the aforementioned Notification. I also take note of the objections, raised on behalf of the customs authorities, and find that the matter with regard to the eligibility of the petitioner for the benefit of concessional rate of duty as per the Notification aforementioned can be finally decided only through an adjudication at the hands of the respondents. Pending such adjudication, however, the petitioner is entitled to obtain a provisional release of the goods moreso because the goods in question are perishable in nature. I am therefore of the view that, the interests of justice would require me to permit the petitioner to provisionally clear the goods on compliance with the conditions mentioned inExt.P17 communication, save for Condition No.3 therein, namely, the payment of differential duty (on tariff rate). While the payment that is required of the petitioner in Ext.P17 communication is 35% of the differential duty, I feel the respondents will be justified in insisting only on payment of 20% of the differential duty in the instant case, relying on the Customs (Provisional Assessment) Regulations. I, therefore, modify the said condition in Ext.P17 to read as “payment of 20% of differential duty (on tariff rate)”, in lieu of “payment of 35% of differential duty (on tariff rate)” as mentioned in Ext.P17. Save for this limited modification, I do not see any reason to otherwise interfere with Ext.P17 communication. Accordingly, the writ petition is disposed by directing the respondents to permit the petitioner to clear the goods imported by him, under cover of the bills of entry mentioned in Ext.P17, on payment of 20% of the differential duty, and on compliance with the other conditions (serial No.1, 2 and 4) mentioned in Ext.P17 communication. On the petitioner satisfying the said conditions, the respondents shall release the goods on provisional basis forthwith. It is made clear that the observations in this judgment will not in any way affect the adjudication that is to be done by the respondents. Keeping in mind the necessity for an urgent disposal of the matter, the respondents shall endeavour to complete the adjudication within an outer period of six months from the date of receipt of a copy of this judgment.

A.K.JAYASANKARAN NAMBIAR
JUDGE

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