

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2016

CORAM

THE HONOURABLE MR. JUSTICE M.DURAI SWAMY

W.P.No.2355 of 2016

and

W.M.P.No.2035 of 2016

M/s.Nav Agro Pvt.Ltd.,
rep.by its Director: S.N.Saravanakumar,
No.7/292, 1st Street, Gandhi Nagar,
Medavakkam, Chennai - 600 100. ..Petitioner

Vs.

1. The Deputy Commissioner of Customs, Group-II,
O/o.Commissioner of Customs, (Imports),
Custom House, 60, Rajaji Salai,
Chennai - 600 001,
2. The Deputy Commissioner of Customs,
Uncleared Cargo Cell, Central Document Complex,
Rajaji Salai, Chennai - 600 001.
3. The Commissioner of Customs (Imports),
Custom House, 60, Rajaji Salai,
Chennai - 600 001. ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking for the relief of issuance of writ of mandamus to direct the respondents to release the goods of the petitioner under Bill of Entry No.2242349 dated 13.08.2015 within the stipulated time without reference to the impugned notification dated 1.1.2015 passed by the 1st respondent.

For Petitioner : Mr.M.Venkatachalapathy,
Sr.Counsel for Mr.M.Sriram

For Respondents : Mr.K.Mohanamurali, CGSC

O R D E R

The petitioner has filed the above writ petition for issuance of a writ of mandamus directing the respondents to release the goods of the petitioner under the Bill of Entry

No.2242349 dated 13.8.2015 within a stipulated time without reference to the impugned notification dated 1.1.2015 passed by the 1st respondent.

2. It is the case of the petitioner that in the month of August, 2015, they imported a consignment of Thiamexthoxam 141 G/L+Lambda-Cyhalothrin 106 GL falling under Chapter Heading 38089199 of the Customs Tariff Act from a supplier in China. The goods were imported to Chennai Sea Port for re-export to third party client in Colombia, which was specifically mentioned in the Bill of Entry dated 13.8.2015. The petitioner provided all the necessary documents before the Office of the 1st respondent. However, even after furnishing of the information, the consignment was not assessed and cleared under Bond for further export to Colombia. The petitioner by their letter dated 23.9.2015 addressed to M/s.Triway Container Freight Station requested to make arrangements for clearance of goods with a copy enclosed to the 1st respondent's office. In the mean time, the petitioner was orally informed by the Assessing Group that the clearance was withheld for want of Central Insecticide Board (CIB) Registration and for production of Certificate from Central Insecticide Board as per Section 3(e) of the Insecticide Act, 1968.

3. According to the petitioner, the above said provision will be attracted only for domestic and home consumption use and the declaration made in the Bill of Entry will amply illustrate that the product is not home consumption and the said product shall not attract to the products imported by the petitioner.

4. Mr.M.Venkatachalapathy, learned Senior Counsel appearing for the petitioner submitted that in view of the judgment of the Division Bench of the Kerala High Court in Union of India represented by the Secretary Ministry of Finance and others VS. Maliakkal Industrial Enterprises represented by its sole Proprietor, Joseph Maliakkal and others, reported in CDJ 2014 Kerala HC 385, the respondents are bound to release the goods to the petitioner.

5. Mr.K.Mohanamurali, learned Standing Counsel appearing for the respondents submitted that the prayer sought for by the petitioner for mandamus to direct the respondents to release the goods without reference to the notification dated 1.1.2015 cannot be granted for the reason that the said notification is against the petitioner's case. The learned Standing Counsel appearing for the respondents further submitted that the 3rd respondent may be directed to consider the petitioner's representations dated 23.9.2015 and 15.12.2015.

6. Mr.M.Venkatachalapathy, learned Senior Counsel appearing for the petitioner submitted that in such an event the petitioner may be given liberty to give additional representation.

7. In view of the submissions made by the learned counsel appearing on either side, without going into the merits of the case, I give liberty to the petitioner to give one more representation to the 3rd respondent for the release of the goods, within a period of one week from the date of receipt of a copy of this order and the 3rd respondent is directed to consider the representations dated 23.9.2015, and 15.12.2015 already made by the petitioner and also the representation to be submitted by the petitioner and pass orders on merits and in accordance with law within a period of three weeks thereafter after giving due opportunity of personal hearing to the petitioner.

8. With the above observations, the writ petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

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Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Deputy Commissioner of Customs, Group-II,
O/o.Commissioner of Customs, (Imports),
Custom House, 60, Rajaji Salai,
Chennai - 600 001,
2. The Deputy Commissioner of Customs,
Uncleared Cargo Cell, Central Document Complex,
Rajaji Salai, Chennai - 600 001.
3. The Commissioner of Customs (Imports),
Custom House, 60, Rajaji Salai,
Chennai - 600 001.

+ 1 cc to Mr.K.Mohanamurali, Advocate Sr 23376

+ 1 cc to Mr.M.Sriram, Advocate Sr 23348

KR/18/4/16

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