

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos. 27890 & 28061 of 2008

and

W.M.P.Nos. 1 & 1 of 2008

M/s.Empire Exports
Rep by its Proprietor
Mr.Bimal Kumar Modi
1, Govind Chandra Dhar Lane
Kolkatta - 700 001. ... Petitioner in WP
No.27890/2008

M/s.Bajarang Expo
Rep by its Proprietor
Mr.Mahendra Kumar Modi
163, Rabindra Sarani
Second Floor
Kolkatta - 700 007. ... Petitioner in WP
No.28061/2008

Vs.

1.The Commissioner of Customs [Seaport-Imports]
Custom House, No.60, Rajaji Salai
Chennai - 600 001.

2.The Assistant Commissioner of Customs
Group-1, Custom House
No.60, Rajaji Salai
Chennai - 600 001.

... Respondents in both
WPs

Prayer in WP No.27890/2008: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents herein to release the goods viz., 88,800 mts., of Betel Nuts Split (2nd Grade) imported vide Bill of Entry No.869479, dated 17.10.2008, by extending the full exemption contained in Notification No.67/2006, dated 30.06.2006.

Prayer in WP No.28061/2008: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents herein to release the goods viz., 13,365 mts., of Betel Nuts Split Processed imported vide Bill of Entry No.880065, dated 31.10.2008, by extending the full exemption contained in Notification No.67/2006-Cus, dated 30.06.2006.

For Petitioners
[in both Wps] .. Mr.A.K.Jayaraj

For Respondents
[in both Wps] .. Mr.A.P.Srinivas
Special Panel Counsel

O R D E R

The petitioners in both the writ petitions seek for release of the goods, viz., 88,800 mts. and 13,365 mts. of Betel Nuts Split by granting exemptions. At the time when the writ petition was admitted on 25.11.2008, no interim orders were granted and notices alone were ordered in the interim applications, wherein, the petitioners sought for a direction for provisional release.

2.It is not clear as to what has happened in the interregnum, i.e., during the pendency of the writ petitions. That apart, the goods are perishable in nature and the quantities involved are also huge. With all these probabilities, the goods ought to have been released. If the release of the goods were provisional, then the petitioners are entitled to canvass their plea of exemption before the authority, who shall, in turn, consider such claims in accordance with law. This is so because, this Court cannot make a fact-finding exercise to ascertain as to whether the particular product comes under an exemption notification. Though, some legal interpretation is sought to be given by the writ petitioners, essentially the plea of exemption revolves on facts, which may be product-specific, country-specific, user-specific etc.

3.Therefore, the petitioners have to canvass the plea of exemption first before the authority and then, exhaust all the remedies available under the Act.

4.With the above direction, the writ petitions are disposed of, leaving it open to the writ petitioners to approach the authorities with regard to the plea of exemption. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

may

To

1.The Commissioner of Customs [Seaport-Imports]
Custom House, No.60, Rajaji Salai
Chennai - 600 001.

2.The Assistant Commissioner of Customs
Group-1, Custom House
No.60, Rajaji Salai
Chennai - 600 001.

+2 ccs to M/s.A.P.Srinivas Advocate sr 78476,78475

W.P.Nos. 27890 & 28061 of 2008

ariv
aa24/11/2017

सत्यमेव जयते

WEB COPY