

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.27157 of 2017

and

W.M.P.No.29015 of 2017

M/s.Nandi Marketing

Rep by its Partner Mr.Chandresh D.Shah

1 to 6, Dheeraj Leelaa

Padasalai Road (School Road)

Opp. Govt. Vet. Hospital

Ayanambakkam, Chennai - 600 095.

...Petitioner

Vs.

1. The Director General of Foreign Trade
Ministry of Commerce & Industry
Department of Commerce
Udyog Bhavan, New Delhi - 110 011.

2. The Commissioner of Customs
Chennai II Commissionerate
Customs House, 60, Rajaji Salai
Chennai - 600 001.

3. The Joint Commissioner of Customs (Group-6)
Customs House, 60, Rajaji Salai
Chennai - 600 001.

4. The Deputy Commissioner of Customs
In-Charge of O-Yard
Chennai Port Trust
No.1, Rajaji Salai
Chennai - 600 001.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, quashing the examination order dated 16.09.2017 in respect of Bill of Entry No.3265351 dated 16.09.2017 in so far as they relates to compliance with Director General of Foreign Trade Notification No.26/2015-2020 dated 01.09.2017 and direct the second to fourth respondents to release the goods covered by the said Bill of Entry based on the certificate already submitted as per conditions in force as on 31.08.2017.

For Petitioner :Mr.S.Murugappan

For Respondents :Mr.Venkataswamybabu (For R1)
Mr.A.P.Srinivas (For R2 to R4)
Senior Panel Counsel

O R D E R

Heard Mr.S.Murugappan, learned counsel for the petitioner, Mr.Venkataswamybabu, learned Senior Panel Counsel appearing on behalf of the first respondent and Mr.A.P.Srinivas, learned Senior Panel Counsel appearing on behalf of respondents 2 to 4.

2.The petitioner has filed this writ petition, seeking for issuance of a writ of Certiorarified Mandamus to quash the examination order dated 16.09.2017 in respect of Bill of Entry No.3265351 dated 16.09.2017 in so far as they relates to compliance with Director General of Foreign Trade Notification No.26/2015-2020 dated 01.09.2017 and direct the second to fourth respondents to release the goods covered by the said Bill of Entry based on the certificate already submitted as per conditions in force as on 31.08.2017.

3.The Director General of Foreign Trade notification provides for testing by an independent laboratory to ensure that the cargo which is imported by the petitioner, which are children toys are safe for being sold in the domestic market. One of the contentions raised by the petitioner is by contending that the notification issued by the Director General of Foreign Trade having been uploaded in the Government of India Gazette much after the consignment was dispatched, cannot be made applicable to the impugned consignment. This contention has to be rejected in the light of the decision of this Court in Cascade Energy Private Limited Vs. Union of India and Ors. in W.P.No.14626/2017 etc. batch, dated 25.01.2018, wherein it was held that the date of uploading in the Electronic Gazette is of no consequence and the date of notification shall be the date on which the same comes into force. Therefore, the first contention raised by the petitioner has to be rejected. This leaves us with only one issue as to whether the petitioner is entitled for release of the cargo.

4.Considering the effect of the recent notification which has been issued in public interest, that the cargo cannot be released without appropriate testing at the prescribed lab which facility appears to be available as of now at New Delhi. However, the problem expressed by the importer/petitioner is that the cargo contains children toys and there are several varieties of children toys and if sample is drawn from each of the category of toys then it will be an expensive affair and totally unviable.

5.Mrs.Hema Muralikrishnan, learned Senior Standing Counsel appearing for the revenue expressed her concern about the nature of cargo and submitted that unless rigorous testing is done and the cargo is certified for release, the same cannot be permitted to be released for home consumption.

6.Considering the concern expressed by the revenue and also balancing the interest of the importer, the court is of the opinion that the following order would meet the ends of justice.

7.The respondent/department is permitted to draw representative samples, which shall not exceed 15% of each variety of the cargo, which has been imported. In other words, the respondents shall draw representative samples of one(1) piece per variety. While drawing the samples, the customs house agent of the petitioner should be permitted to be present and after the samples are drawn, the same shall be sent to the approved laboratory for testing and on receipt of the test report, the respondents are directed to pass appropriate orders on merits and in accordance with law.

8.It is needless to state that the cost of testing shall be borne by the petitioner, if the demand is raised on the petitioner and the advance payment is called for and the same shall be remitted.

9.The samples shall be drawn within a period of one(1) week from the date of receipt of the copy of this order and forwarded to the approved laboratory for testing and I am told that the laboratory will require four (4) weeks time for completing the test and submitting a report. From the date of receipt of a copy of the report the respondents are directed to pass orders in terms of the above direction within a period of two(2) weeks thereafter.

10.With the above direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

may a

To

1. The Director General of Foreign Trade
Ministry of Commerce & Industry
Department of Commerce
Udyog Bhavan, New Delhi - 110 011.
 2. The Commissioner of Customs
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In-Charge of O-Yard
Chennai Port Trust
No.1, Rajaji Salai
Chennai - 600 001.
- +1 CC to Mr.A.P. Srinivas, Advocate sr 6432.
+1 CC to Mr.S. Murugappan, Advocate sr 6299.
+1 CC to Mr. Venkatasamy Babu, Advocate sr 7097.

SP(19/02/2018)

W.P.No. 27157 of 2017

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