

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.02.2018

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

W.P.No.1398 of 2018

and

W.M.P.Nos.1767 & 1768 of 2018

M/s. M.R.Impex, having his office at
No.7, Kalmattu Street, Nagapattinam District,
Nagoor, Tamilnadu - 611 002.
rep.by its Proprietor Shri
Bhava Bagurudeen Sahib ...Petitioner

Vs.

1. The Union of India,
Rep.by Secretary, Department of
Revenue, Ministry of Finance,
New Delhi - 110 001.
2. The Narcotics Commissioner,
Central Bureau of Narcotics,
19, The Mall, Morar,
Gwalior - 474 006.
3. M/s. Bora Agro Foods Partnership Firm,
rep. by its Partner, Rajendra Kesharchand Bora.
Shop. No. 565 & 567, Duncan Road, Lane No.5
Market Yard, Pune 411 037
Maharashtra India.

(R-3, impleaded as per order passed today, in
W.M.P.No.3209 of 2018 of this W.P.)

...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, to call for the records of the 2nd respondent, leading to issuance of Public Notice No.PS-1/2018 dated 10.01.2018, in F.No.XVI/13/22/N/PS/2017, as the same is ultra vires under the provisions of Chapter 12 of Customs Tariff Act, 1975 read with Licensing Notes referred to therein, and also contrary to the dictum of this Hon'ble Court in the cases of M/s.Sri Adinath Traders Vs. Union of India in W.P.No.29806/2015, dated 05.02.2016 and W.P.No.5019 of 2015 dated 05.04.2015, read with

Judgment of the Hon'ble Supreme Court in the case of M/s. Kanak Exports reported in 2015(326) ELT 26(SC).

For Petitioner :Mr.Vijay Narayan
Senior Counsel
for Mr. B.Sathishsundar

For Respondents
1 & 2 : Mr.G. Rajagopalan
Additional Solicitor General
assisted by
Mrs. B.Rabu Manohar,
Senior Standing Counsel

For Respondent-3: Mr.P.S.Raman,
Senior Counsel
for M/s. Preethi Mohan

O R D E R

Heard Mr.Vijay Narayan, the learned Senior Counsel for Mr.B.Sathishsundar, the learned counsel for the petitioner, Mr.G.Rajagopalan, the learned Additional Solicitor General assisted by Mrs. B.Rabu Manohar, the learned Senior Standing Counsel for respondents 1 and 2 and Mr.P.S.Raman, the Senior Counsel for M/s. Preethi Mohan, the learned counsel for the third respondent.

2. The petitioner has filed this Writ petition, praying for issuance of a writ of certiorari to quash the public notice issued by the second respondent, dated 10.01.2018, as being ultra vires under the provisions of the Customs Tariff Act, 1975 read with Licensing notes and also contrary to the orders passed by this Court, in W.P.No.29806 of 2015, dated 05.02.2016, W.P.No.5019 of 2015, dated 05.04.2015, and the decision of the Hon'ble Supreme Court, in Director General of Foreign Trade Vs. M/s. Kanak Exports, reported in [2015 (326) ELT 26(SC)].

3. When the case was heard for admission on 23.01.2018, the learned Senior Counsel for the parties made an elaborate submissions, and after taking note of the submissions, I passed the following order:-

" Heard Mr.Vijay Narayan, learned Senior Counsel appearing on behalf of Mr.B.Satish Sundar, learned counsel on record for the petitioner.

2. This writ petition has been filed by an importer of poppy seeds challenging the public notice dated 10.1.2018 as ultra vires the provisions of Chapter XII of the Customs Tariff Act, 1975 read with the Licensing Notes and also contrary to certain earlier decisions of this Court and the decision of the Hon'ble Supreme Court in the case of DGFT Vs. M/s.Kanak Exports [reported in (2015) 326 ELT 26].

3. The learned Senior Counsel appearing for the petitioner would contend that an identical notification, which was issued in the year 2016, was challenged before the High Court of Karnataka at Bengaluru in W.P.Nos. 65486 and 65487 of 2016, in which, an interim order has been granted on 22.12.2016 by directing the second respondent herein to defer the drawal of lots scheduled to be held on 27.12.2016 at 11 AM pursuant to the public notice dated 05.12.2016 or to any further date after 05.1.2017 and the cases were directed to be listed on 05.1.2017. Thereafter, the said interim order has been extended periodically and ultimately, the said writ petitions were heard finally and this Court is informed that orders have been reserved by the learned Single Judge of the High Court of Karnataka during December 2017.

4. Therefore, the learned Senior Counsel appearing for the petitioner submits that similar interim order may be granted in this writ petition as well, as the impugned public notice dated 10.1.2018 seeks to do the same thing, which was done by the second respondent in the public notice dated 05.12.2016.

5. Mr.Rabu Manohar, learned Senior Standing Counsel accepting notice for the respondents would submit that the said writ petitions before the Karnataka High Court have been finally heard, that orders are awaited and that in due respect of the interim order granted by the Karnataka High Court, the public notice dated 05.12.2016 was not given effect to and the drawal of lots was deferred.

6. The challenge to the impugned public notice is on the ground that the Central Government cannot delegate the power under Sections 3, 5, 15, 16 and 19 of the Foreign Trade (Development and Regulation) Act, 1992 and one of which being Section 5, which empowers the Central Government to formulate and announce, by notification in the official gazette, the Export and Import Policy and may also, in like manner, amend that Policy. Therefore, it is submitted that the second respondent nor the Department of Revenue has jurisdiction to impose restrictions on the quantity of poppy seeds that can be allowed to be imported nor can there be a restriction as to who should be permitted to import and in any event, allocation cannot be done by drawal of lots.

7. Mr.P.S.Raman, learned Senior Counsel appearing for Ms.Preeti Mohan, learned counsel for the intervener - M/s.Bora Agri Tech represented by its partner, shop Nos.565 and 567, Duncan Road, Lane No.5, Market Yard, Pune-411037, Maharashtra, would submit that parties, who seek to import poppy seeds, will submit their applications to the second respondent, which will be considered by the second respondent and only in the event that the applied quantity is in excess of the quantity allowable to be imported, the question of allocation by drawal of lots would arise.

8. In reply, the learned Senior Counsel appearing on behalf of the petitioner would submit that the Karnataka High Court granted an interim order in the said writ petitions challenging the earlier notification issued in the year 2016 and that the interim order passed by the Karnataka High Court binds the second respondent.

9. In my considered view, the interim order granted by the Karnataka High Court may bind the second respondent, but not this Court. At best, it can be relied upon for persuasive purposes before this Court. However, this Court finds that the interim

order granted by the Karnataka High Court only directed deferral of drawal of lots and that it has not granted stay of the public notice dated 05.12.2016 nor prohibited the second respondent from exercising his jurisdiction eternally. Therefore, this Court would be well justified in issuing suitable interim directions, which would enable the parties to report exact state of affairs, which may result in drawal of lots not necessary to be conducted. However, the interim order, which this Court proposes to issue, will, in no way, prejudice the rights of the petitioner, as they have challenged the jurisdiction of the second respondent to issue the impugned public notice and what is directed to be done by the petitioner shall be without prejudice to the rights and contentions of the petitioner in this writ petition.

10. Accordingly, there will be a direction to the petitioner and all other similarly placed importers to file their applications before the second respondent well before the cut off date and the applications shall be received by the second respondent. It is made clear that submission of the application by the petitioner is without prejudice to their rights in this writ petition. The second respondent is also directed to make a note about the pendency of this writ petition before this Court at the instance of the petitioner, so that the other applicants are aware that such a case is pending before this Court. The second respondent, after receiving the applications, shall consider the same and before making any allocation, shall report before this Court as to what is the quantity, which has been applied for by the importers. On such information being placed before this Court by the second respondent, this Court will consider as to what further directions need be issued. This Court is convinced to issue such a direction considering the fact that on account of deferral of drawal of lots by the Karnataka High Court, it appears that for nearly a year, imports have not been permitted. In fact, to my mind, the interim order granted by the Karnataka High Court

can, at best, may be applicable to the public notice dated 05.12.2016 and it cannot be understood as a blanket ban on imports. Be that as it may, considering the commercial considerations involved and the exigencies of trade, it would be in the fitness of things for all importers to file their applications before the second respondent and this Court can consider as to how best the interest of the importers could be protected.

11. Mr.Rabu Manohar, learned Senior Standing Counsel is directed to inform the respondents about this order and ensure fair compliance. List on 06.2.2018 at the end of motion list."

4. In terms of the above order, the petitioner was directed to file their application before the second respondent well before the cutoff date and the application was directed to be received by the second respondent. This direction was without prejudice to the contention raised by the petitioner, in the Writ Petition. The Court observed that, it is convinced to issue such a direction, considering the fact that, on account of deferral of drawal of lots by the Karnataka High Court, nearly for one year, imports have not been permitted, and this observations was made on the ground that, as such interim order at best, may be applicable to the Public notice, dated 05.12.2016, and it cannot be understood as a blanket ban on imports. The case was directed to be listed on 06.02.2018 (today) to consider, as to how best, the interest of the importers could be protected.

5. When the case is heard today, it is seen that the petitioner did not comply with the direction issued in paragraph No.10 of the order, dated 23.1.2018, in this Writ Petition. The reason being that the petitioner does not have any contracts trade from China.

6. Thus, the petitioner has no locus standi to challenge the impugned notification. It is brought to my notice that, in the Writ Petition pending before the High Court of Bangaluru, the petitioner therein had moved an Interlocutory Application, praying for certain directions, which came to be disposed of by the learned Single Judge, by order, dated 01.02.2018. It is rather surprising that the second respondent appears to have not taken any steps to vacate the interim order granted by the High Court of Karnataka, which was granted at the first instance on 22.12.2016. The Court can take judicial notice of the fact that, whenever, a notification or regulation or

public notice is put to challenge, the Central Government and its Authorities would leave no stone unturned to vacate any prohibition granted by any Court. But, however, in the opinion of the second respondent in the present case, it appears that he did not want to proceed further with the matter, though they thought it fit to argue Writ Petition finally. I wish to say nothing more on this aspect, and it is open to the respondents to proceed in the manner, as they propose to do.

7. In the light of the above fact, the petitioner has no locus standi to challenge the impugned notification and apart from that, having not complied with the interim direction issued by this Court, on 23.01.2018, this Court is not inclined to entertain this Writ Petition.

8. For the above reasons, this Writ Petition stands dismissed. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

klr/sd
To

1. The Union of India,
Rep.by Secretary, Department of
Revenue, Ministry of Finance,
New Delhi - 110 001.
2. The Narcotics Commissioner,
Central Bureau of Narcotics,
19, The Mall, Morar,
Gwalior - 474 006.

+1 CC to M/s. Preethi Mohan, Advocate sr 8704.
+1 CC to M/s. R. Rabu Manohar, advocate sr 8701.

W.P.No.1398 of 2018

AK(CO)
SP(23/03/2018)