

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 17.07.2019

CORAM
THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.No.19580 of 2019
and WMP No.19096 of 2019

Smt.Mariyam Siraj, Partner of
M/s.Royal Impex
No.38, Acharappan Street
2nd Floor, Chennai - 600 001.

..Petitioner

vs.

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

2.The Assistant/Deputy Commissioner of
Customs, Group-1
Chennai II Commissionerate
Custom House, 60 Rajaji Salai
Chennai - 600 001.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents to cause release of 'Toor Whole (Pigeon Peas)' imported by the petitioners under Bill of Entry No.2922960 dated 20.04.2019, under the cover of Bill of Lading No.MEDUTZ001750 dated 20.02.2019, covered under Contract No.2562/PSPIL/786/18-19 dated 02.08.2018 in terms of the orders of this Hon'ble Court dated 27.02.2019 and further direct the respondents to issue a 'Detention Certificate' for waiver of Demurrage and Container Detention Charges in terms of Regulation 6(1)(I) of Handling Cargo in Customs Areas Regulations 2009 and thus render justice.

For Petitioner : Dr.S.Krishnanandh

For Respondents : Mr.Rajkumar Jhabakh
Standing Counsel for Customs.

ORDER

Dr.S.Krishnanandh, learned counsel on record for sole writ petitioner and Mr.Rajkumar Jhabakh, learned Standing Counsel for Customs on behalf of both the respondents are before this Court.

2. Read this in conjunction with and in continuation of earlier proceedings of this Court dated 11.07.2019, which reads as follows:

'Mr.Rajkumar Jhabakh, learned Standing Counsel for Customs accepts notice on behalf of both the respondents, seeks time to get instructions and respond.

List this matter on 17.07.2019 in the 'Motion List'.

3. After getting instructions, learned Standing Counsel for Customs is before this Court.

4. With consent of learned counsel on both sides, main writ petition itself is taken up, heard out and is being disposed of.

5. Owing to the trajectory of the hearing today, it may not be necessary to set out factual matrix in great detail. Suffice to say that subject matter of instant writ petition pertains to import of Pigeon Peas i.e., Toor Dal. This Court is informed that the botanical name for the same is 'Cajanus Cajan'. This Pigeon Peas i.e., Toor Dal, for which the botanical name is Cajanus Cajan, is also referred to as 'Toor Whole' is, what this Court is informed, without any disputation. Therefore, this shall hereinafter be referred to as 'said goods' for the sake of convenience and clarity.

6. As far as the import by the writ petitioner is concerned, a consignment of said goods was imported pursuant to a contract dated 02.08.2018, bearing Contract No.2562/PSPIL/786/18-19, vide Bill of Lading No.MEDUTZ001750, dated 20.02.2019 and the Bill of Entry Number is 2922960 dated 20.04.2019. This consignment of said goods imported by writ petitioner under this Contract, Bill of Lading and Bill of Entry shall hereinafter be referred to as 'said consignment' for the sake of convenience and clarity.

7. There is no disputation that there is a notification being notification No.19/2015-2020 issued by the Director General of Foreign Trade with regard to importability of said goods. This notification has been issued by the said authority in exercise of powers under Section 3 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992). This notification pertains to certain restrictions with regard to importability qua said goods. Considering the trajectory of the hearing before this Court in the instant writ petition today, it may not be necessary to make any further elaboration on the same. Suffice to say that this notification was assailed inter alia by the writ petitioner by way of writ petitions in

this Court, being W.P.Nos.21454 and 21455 of 2018 and this Court, had, vide order dated 23.08.2018, granted interim orders, staying the operation of the said notification.

8. It is submitted that the stay was thereafter extended and it was operating.

9. While the stay was operating, writ petitioner and several other importers had imported said goods vide another consignment and these imports ran into rough weather. Therefore, this writ petitioner along with several other similarly placed importers filed writ petitions in this Court seeking release of the other consignment and issue of detention certificate for waiver of demurrage and container detention charges. This is vide W.P.No.4403 of 2019 etc., and this batch of 66 writ petitions came to be disposed of by another Hon'ble Judge in and by a final order dated 27.02.2019, which came to be passed after hearing both sides.

10. On instructions, it is submitted that the respondents therein i.e., Customs Department did not prefer any intra Court appeals, but the Director General of Foreign Trade had sought third party leave to file an Intra-Court appeal, but the undisputed position as of today before this Court is that the aforementioned order dated 27.02.2019 made by another Hon'ble single Judge in W.P.No.4403 of 2019 etc., has neither been reversed nor stayed. Therefore, the said order is operating and governing the field. There is also no disputation or disagreement that several other importers like the writ petitioner or in other words, similarly placed importers have had the benefit of release and issue of detention certificate with regard to demurrage and container detention charges, pursuant to this order dated 27.02.2019 made in a batch of 66 writ petitions.

11. Under such circumstances, instant writ petition has been filed seeking release and issue of detention certificate, obviously, for demurrage and container detention charges with regard to said consignment, which is said products.

12. Learned Standing Counsel for customs submits that with regard to challenge to the aforesaid notification, being notification No.19/2015-2020, dated 05.08.2017, which was stayed vide orders mentioned supra, the writ petitions ultimately came to be dismissed by a common order dated 04.04.2019 in a batch of writ petitions. In this backdrop, what is now of relevance is, there is no disputation or disagreement before this Court that as far as release of consignment with regard to importer is concerned, the reckoning date is the date of Bill of Lading. As would be evident from the narrative thus far, it will be clear that Bill of Lading in the instant case is dated 20.02.2019.

Therefore, the Bill of Lading is before 27.02.2019, but what is of utmost significance is, it is before 04.04.2019 also.

13. It is submitted without any disputation or disagreement that even during the period between 27.02.2019 and 04.04.2019, several importers, who are similarly placed i.e., similarly placed qua the writ petitioner, have been given the benefit of aforesaid order dated 27.02.2019, based on the dates of Bills of Lading, which again is, without any disputation, the reckoning date in such issues qua release of issue of detention certificates.

14. If the importers, who are similarly placed qua writ petitioner, have got the benefit, this Court is of the considered view that writ petitioner herein is also entitled to the same benefit as no exceptional circumstances have been pointed out to say that this writ petitioner stands on a different putting and is not entitled to a similar relief.

15. Therefore, this narrative leads this Court to the indisputable and inevitable sequitur that writ petitioner herein will be entitled to release of the said consignment in accordance with the conditions imposed by another Hon'ble Single Judge vide final order dated 27.02.2019 in W.P.No.4403 of 2019 batch (66 writ petitions).

16. This Court is also informed that the duty payable for said consignment (the same being said product) is 10% of the invoice value. In the earlier order, predecessor Hon'ble Single Judge has permitted release of goods and issue of detention certificate subject to the condition that writ petitioner pays duty of 10% of the invoice value and furnishes bank guarantee for another 10% of the invoice value obviously, to cover any situation which may arise owing to adjudication proceedings if any.

17. Therefore, instant writ petition is ordered directing the respondents, more particularly, the second respondent to release the writ petitioner's consignment of 'Toor Whole (Pigeon Peas)' imported by the petitioners under Bill of Entry No.2922960 dated 20.04.2019, under cover of Bill of Lading No.MEDUTZ001750 dated 20.02.2019, covered under Contract No.2562/PSPIL/786/18-19 dated 02.08.2018, subject to writ petitioner paying 10% of the invoice value towards duty and furnishing bank guarantee for another 10% within a fortnight from the date of receipt of a copy of this order. Besides release of the consignment, the second respondent shall issue necessary detention certificates qua demurrage and container detention charges.

18. Writ petition is ordered on above terms. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (C/L)

//True Copy//

Sub Assistant Registrar

vsm

To

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

2.The Assistant/Deputy Commissioner of
Customs, Group-1
Chennai II Commissionerate
Custom House, 60 Rajaji Salai
Chennai - 600 001.

+1cc to Mr.Rajkumar Jhabakh, Advocate, S.R.No.61522

+1cc to Mr.B.Sathish Sundar, Advocate, S.R.No.60660

W.P.No.19580 of 2019
and WMP No.19096 of 2019

GP (CO)

RRS (05/08/2019)

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