

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Wednesday, the Seventh day of August Two Thousand Nineteen

PRESENT

THE HON`BLE MR JUSTICE M. SUNDAR

WMP No.22627 of 2019

IN WP.22976/2019

1 M/S. BAYM TRADE PVT. LTD., [PETITIONER]
REP. BY ITS DIRECTOR, SHRI. ROHIT SUKUMAR,
NO. 15/ 6, BREWERY ROAD, SHENOY NAGAR,
CHENNAI - 600030

Vs

1 THE UNDER SECRETARY, [RESPONDENTS]
UNION OF INDIA, MINISTRY OF AGRICULTURE AND
FRAMES, WELFARE DEPARTMENT OF AGRICULTURE,
KRISHI BHAVAN, NEW DELHI

2 THE PLANT PROTECTION OFFICER,
REGIONAL PLANT QUARANTINE STATION (RPQS),
GST ROAD, (NEAR TRIDENT HOTEL), MEENAMBAKKAM,
CHENNAI - 600027

3 THE DEPUTY COMMISSIONER OF C
USTOMS (GROUP 2),, CUSTOM HOUSE,
NO. 60, RAJAJI SALAI, CHENNAI - 600001

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to issue an Interim Direction to direct the 3rd Respondent to clear the consignment covered by bill of landing No.BGA0250829 dated 20.06.2019 without insisting on off-shore methyl bromide fumigation (IN WMP.NO.22625 OF 2019) pending disposal of this writ petition NO.22976 OF 2019.

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of HARI RADHAKRISHNAN, Advocate for the petitioner and of MR.VELUDOSS, ADVOCATE FOR 1 & 2 Respondents and of MR.T.L.THIRUMALAISWAMY, Senior Panel Counsel on behalf of the 3rd Respondents the court made the following order:-

Petitioner in the main writ petition is the petitioner in instant 'Writ Miscellaneous Petition' ('WMP' for brevity).

2. Learned counsel for petitioner herein submits that writ petitioner company regularly imports timber from countries like Cameroon, Columbia and the same are sold locally i.e., in domestic market by writ petitioner company.

3. Mr.Veludoss, learned counsel accepts notice on behalf of respondent Nos.1 and 2. Mr.T.L.Thiurmalaismy, learned Senior Panel Counsel accepts notice on behalf of respondent No.3.

4. There is no dispute that the consignment, which forms subject matter of instant writ petition, i.e., Timber, is an agricultural commodity within the meaning of 'Plant Quarantine (Regulation of Import into India) Order, 2003', hereinafter 'PQ Order 2003' for brevity. The issue is with regard to fumigation.

5. PQ Order 2003 has been made by the Central Government in exercise of its powers under Section 3(1) of Destructive Insects and Pests Act, 1914 (2 of 1914).

6. With regard to the PQ Order 2003 and fumigation, the first respondent issued a Office Memorandum dated 27.12.2018, hereinafter referred to as 'earlier Office Memorandum' for clarity/convenience and the same reads as follows:

NO.8-131/2016-PP.II
Government of India
Ministry of Agriculture & Farmers Welfare
Department of Agriculture, Cooperation & Farmers Welfare

Krishi Bhawan, New Delhi - 110 001
Dated the 27th December, 2018

OFFICE MEMORANDUM

Subject : Relaxation of fumigation regulations for import of agricultural commodities - regarding.

Reference is invited to Department of Agriculture, Cooperation and Farmers Welfare letter No. 8-65/2012-PP.II dated 30th October, 2014 and Office Memorandum of even number dated 30.03.2017, 28.06.2017, 29.12.2017 and 25.06.2018, regarding relaxation in fumigation regulations for import of agricultural commodities into India. The competent authority in the Department of Agriculture, Cooperation and Farmers Welfare has decided to extend the relaxation of fumigation regulations for import of agricultural commodities for which fumigation treatment with Methyl Bromide is stipulated in the Plant Quarantine (Regulation of Import into India) Order, 2003 (PQ Order, 2003)

till 30th June, 2019, on the following conditions:-

(i) The date of Bill of Lading in the country of export may be 30th June, 2019 or before;

(ii) If fumigation treatment with Methyl Bromide is stipulated for that commodity in the PQ Order, 2003, it will be allowed without offshore Methyl Bromide fumigation from those countries, which certify discontinuance of this chemical for phytosanitary measure;

(iii) Penal fee in respect of those consignments will be charged, as prescribed in the PQ Order, 2003;

(iv) The other conditions mentioned in the OM No.8-65/2012-P.II dated 30th October, 2014 will remain unchanged;

(v) Non-compliance reported in the import of such plants and plant products consignments will be dealt as per the provisions of PQ, Order, 2003.

sd/-

(S.R. Raja)

Under Secretary to the Govt. of India

Tele: 23070047

E-mail: raja.sr@nic.in

(Underlining made by this Court to highlight and supply emphasis)

7. Earlier Office Memorandum was assailed in the Madurai Bench of this Court by more than one importer and a Hon'ble Single Judge granted an order of interim stay of operation of condition No.(iii) of earlier Office Memorandum vide order dated 25.02.2019 made in WMP (MD)No.3376 of 2019 in W.P.(MD)No.4255 of 2019 and the order dated 24.04.2019 made in W.M.P.(MD)No.7711 of 2019 in W.P.(MD) No.9812 of 2019. There is no dispute that the aforesaid interim orders are now operating and the main writ petitions are pending.

8. Learned counsel for writ petitioner submits that while matters stood as above, first respondent has issued another 'Office Memorandum dated 01.07.2019' (hereinafter 'impugned Office Memorandum' for brevity).

9. Impugned Office Memorandum reads as follows:

NO.8-131/2016-PP.II

Government of India

Ministry of Agriculture & Farmers Welfare

Department of Agriculture, Cooperation & Farmers Welfare

Krishi Bhawan, New Delhi - 110 001

Dated the 1st July, 2019

OFFICE MEMORANDUM

Subject : Relaxation of fumigation regulations for
import of agricultural commodities -
regarding.

Reference is invited to Department of Agriculture, Cooperation and Farmers Welfare letter No. 8-65/2012-PP.II dated 30th October, 2014 and Office Memorandum of even number dated 30.03.2017, 28.06.2017, 29.12.2017, 25.06.2018 and 27.12.2018, regarding relaxation in fumigation regulations for import of agricultural commodities into India. The competent authority in the Department of Agriculture, Cooperation and Farmers Welfare has decided to extend the relaxation of fumigation regulations for import of agricultural commodities for which fumigation treatment with Methyl Bromide is stipulated in the Plant Quarantine (Regulation of Import into India) Order, 2003 (PQ Order, 2003) till 31st December, 2019, on the following conditions:-

(i) The date of Bill of Lading in the country of export may be 31st December, 2019 or before;

(ii) If fumigation treatment with Methyl Bromide is stipulated for that commodity in the PQ Order, 2003, it will be allowed without offshore Methyl Bromide fumigation from those countries, which certify discontinuance of this chemical for phytosanitary measure;

(iii) Inspection fee in respect of those consignments will be charged, as prescribed in the PQ Order, 2003;

(iv) The other conditions mentioned in the OM No.8-65/2012-P.II dated 30th October, 2014 will remain unchanged;

(v) Non-compliance reported in the import of such plants and plant products consignments will be dealt as per the provisions of PQ, Order, 2003.

sd/-

(S.R. Raja)

Under Secretary to the Govt. of India

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highlight and supply emphasis)**

10. Adverting to the impugned Office Memorandum, learned counsel for writ petitioner submitted that post aforesaid interim orders granted by a Hon'ble Single Judge in Madurai Bench, the impugned Office Memorandum has been issued by the first respondent by changing the term 'Penal fee' in condition No.(iii) as

'Inspection fee'. In all other respects, the impugned Office Memorandum and earlier Office Memorandum are the same, is learned counsel's say.

11. It is also submitted that the quantum of money payable is the same both in the earlier Office Memorandum and the impugned Office Memorandum with regard to Clause No.(iii) and only nomenclature has been changed from 'Penal fee' to 'Inspection fee'.

12. On instructions, learned counsel for respondent No.3 submits that pursuant to the aforesaid interim orders made in the Madurai Bench some consignments have been permitted to be cleared, but after furnishing bank guarantee for 100% of the penal fee payable under earlier Office Memorandum.

13. Therefore, it follows as a sequitur that some other similarly placed importers have had the benefit of having similar consignment cleared albeit, by providing 100% bank guarantee qua penal fee.

14. Before this Court proceeds further, it is to be mentioned that the central theme of instant writ petition pertains to Methyl Bromide fumigation. In the instant case, it is the stated position of writ petitioner that the consignment which is subject matter of instant writ petition has been fumigated with Aluminum Phosphide as Methyl Bromide is banned in the country of origin viz., Columbia.

15. As far as learned Standing Counsel for respondent Nos.1 and 2 is concerned, learned Standing Counsel, who has accepted notice, seeks time to get further instructions and make submissions regarding merits of the matter.

16. In the instant case, this Court is informed that writ petitioner's consignment which forms subject matter of this case is about 98 tons and it valued at about 18,831 USD, the equivalent being 12,42,000/- INR. To be noted, 'USD' denotes American currency i.e., Dollars and 'INR' denotes Indian currency i.e., Rupees. It is also submitted that the inspection fee being payable in accordance with para 14(2) of PQ Order 2003 is roughly in the region of Rs.1,78,000/- (about 1.78 lakhs). It is submitted that the inspection fee is Rs.3,500/- for the first ton and thereafter, Rs.200/- for every additional tons and that this amount of about 1.78 lakhs has been arrived at by adopting this computation.

17. To be noted, all the aforesaid numerical values are not exact figures and the same will be worked out by writ petitioner importer and the third respondent in accordance with 14(2) of PQ Order 2003. The rough estimated figures have been mentioned only for capturing the larger canvass qua nature of instant case.

18. As far as interim direction is concerned, what is of significance is, the Bill of Lading for the consignment which is subject matter of the instant writ petition is dated 20.06.2019, on

which date earlier Office Memorandum was operating, condition No. (iii) of earlier Office Memorandum had been stayed by the aforesaid order of Hon'ble Single Judge of Madurai Bench. To be noted, with regard to questions pertaining to importability, the date of Bill of Lading is of utmost significance. Therefore, in the instant case, as the Bill of Lading is prior to impugned Office Memorandum and when the earlier Memorandum was governing wherein Condition No. (iii) stayed by Madurai Bench was operating, this Court deems it appropriate to pass the following interim direction order:

a) Respondent No.3 is directed to permit the writ petitioner to clear the consignment (covered by Bill of Lading No.BGA 0250829, dated 20.06.2019) which is subject matter of instant writ petition, on writ petitioner paying 50% of the inspection fee payable under paragraph 14(2) of PQ Order 2003 and providing personal bond for the remaining 50%.

b) Personal bond is to be provided by the deponent of the affidavit filed in support of the instant writ petition viz., Rohit Sukumar, as the writ petitioner is a juristic person viz., a private limited Company.

19. WMP is disposed of with the above direction.

-sd/-

07/08/2019

/ TRUE COPY /

Sub Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

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UNION OF INDIA,
MINISTRY OF AGRICULTURE AND FRAMES,
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C.C. to HARI RADHAKRISHNAN Advocate on payment of necessary charges

The Government Advocate, High Court, Madras - 104.

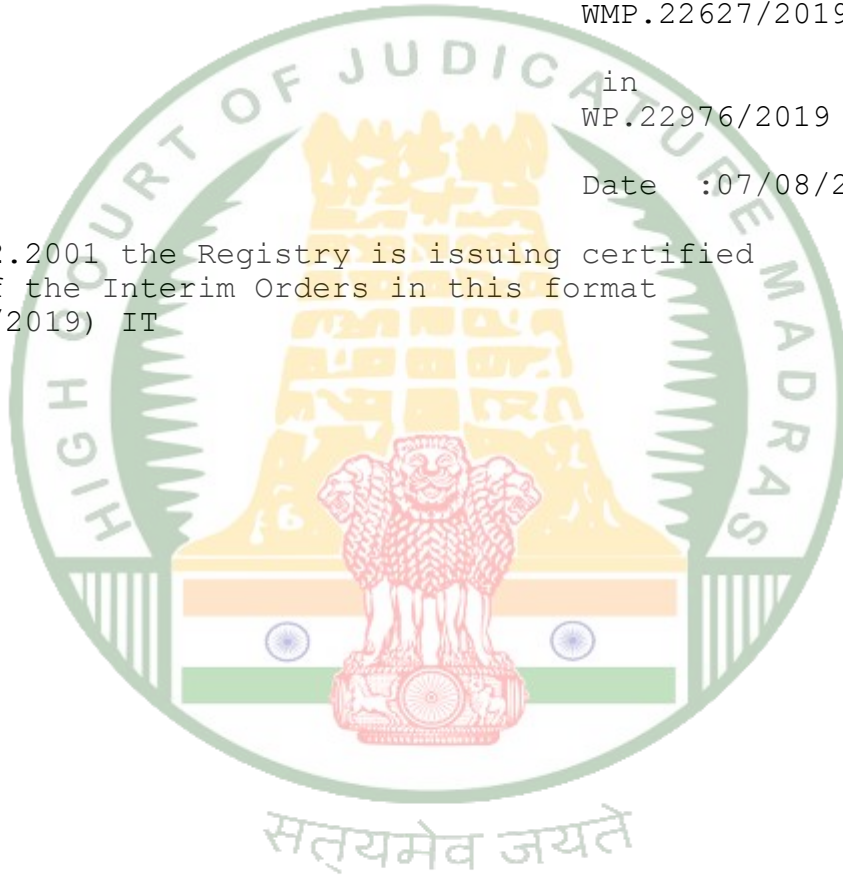
Order

in
WMP.22627/2019

in
WP.22976/2019

Date :07/08/2019

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VC (08/08/2019) IT



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