BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 20.08.2019

CORAM:

THE HON'BLE MR.JUSTICE K.RAVICHANDRABAABU
and
THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.(MD)No.478 of 2019
and
C.M.P.(MD) No.3998 of 2019

1) The Commissioner of Customs,
Customs House,
New Harbour Estate,
Tuticorin - 628 004

2) The Assistant Commissioner of
Customs (Import Assessment),
Custom House, New Harbour Estate,
Tutocorin 628 004 ...Appellants / Respondents

Vs.

M/s.High Range Spices,
Rep. by its Proprietor
M.Mohammed Shahirsha,
V1/272 C.Elavanal Building,
Thekkekkara Erattupetta,
Kottayam,
Kerala 686 122 ... Respondent / Petitioner

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent Act against the order made in W.P.(MD) No.2264 of 2019 dated 01.02.2019.

Prayer in WP(MD). 2264/ 2019 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court directing the respondents herein to assess the bill of Entry and Allow release of the goods viz., 280 Bags ie., 14,000 kgs. of Black Pepper-Matured Berries imported vide Bill of Entry No. 9003969 dated 26.11.2018.

For Appellants/ Respondents : Mr.R.Aravindan

For Respondent : Mr.A.K.Jayaraj

J U D G M E N T
(Judgment of the Court was made by K.RAVICHANDRABAABU, J.)

1. Aggrieved against the order of the Writ Court made in W.P. (MD) No.2264 of 2019, the present Writ Appeal is filed by the Customs Department, who are arrayed as Respondents 1 & 2 before the Writ Court. The Writ Petition was filed by the Respondent herein for issuing a direction to the Respondents therein to assess the Bill of Entry and allow the release of the goods viz. 280 bags (i.e.) 14,000 kgs of "Black Pepper - Matured Berries" imported vide Bill of Entry No.9003969, dated 26.11.2018.

2. The Writ Court disposed the writ petition on 01.02.2019 by holding that the import involved in the case has to be considered as free and consequently, the Respondent should assess the Bill of Entry and allow the release of the goods in question, after following the usual formalities.

3. The case of the Writ Petitioner before the Writ Court is that he is an importer of spices and other goods. He raised an invoice dated 01.11.2018 from its foreign seller for the import of Black Pepper measuring 14,000 kilograms. The unit price of the said quantity of Black Pepper is 6838.00 USD with total FOB USD95900.00 including freight. Thus, as per the invoice dated 07.11.2018, the total cost including price of the above said quantity of Black Pepper is USD 95900.00. The goods landed at Tuticorin port on 26.11.2018 and the Bill of Entry dated 26.11.2018 was filed for clearing of the goods. However, the Respondents therein refused to release the goods on the reason that the CIF per kg was Rs.499.70 on the date of filing the Bill of Entry and consequently, the Petitioner is not entitled for free clearance. According to the Respondents, only when the CIF per kg is above than Rs.500/- , the Petitioner is entitled for clearance as per the notification No.53/2015-2020 dated 21.03.2018.

4. The Respondent resisted the writ petition by contending that the CIF value has to be taken only on the date of filing the Bill of Entry and therefore, when admittedly, the said CIF value was only Rs.499.70 as on the date of Bill of Entry, the Petitioner is not entitled for free clearance. The Writ Court after considering the case of both the parties rejected the contention of the revenue and allowed the writ petition as stated supra.

5. The learned counsel for the Appellant reiterated the

contentions as raised before the writ court, more particularly, by contending that as on the date of filing the Bill of Entry, the CIF was only Rs.499.70/- and therefore, the Petitioner is not entitled to the benefit provided under the notification No.53/2015-2020 dated 21.03.2018. On the other hand, the learned counsel for the Respondent/ Writ Petitioner after inviting our attention to the invoice dated 17.11.2018 as well as the notification No.90/2018-Customs (N.T.) dated 01.11.2018, contended that the relevant date for considering the CIF value is the date of the invoice and not the date of filing the Bill of Entry. Therefore, he submitted that the appellants, on an erroneous view has refused to grant the benefit of the above said notification No.53/2015-2020 dated 21.03.2018.

6. We heard both sides and perused the materials placed before this Court. The notification No.53/2016-2020 dated 21.03.2018 issued by the Minister of Commerce and Industry, Department of Commerce, Directorate General of Foreign Trade clearly indicates that Black Pepper is entitled for free import, if the cost including freight is above Rs.500/- per kg. Perusal of the commercial invoice filed by the Petitioner dated 07.11.2018 clearly indicates that the transaction between the Petitioner and their seller for purchasing the Black Pepper measuring 14,000 kgs took place on 07.11.2018 and the total value of the said goods was arrived as USD95,900.00. It is not in dispute that if the said amount involved in the subject matter transaction is taken into account, the CIF value as on 07.11.2018 would be Rs.511.70/- The notification no.93/2018 - Customs (N.T.) dated 15.11.2018 issued by the Central Board of Indirect Taxes and Customs also states that with effect from 02.11.2018, the exchange rate of the USD is 74.70 for imported goods. The said rate is continued till 15.11.2018 as it is evident from the notification no.93/18 dated 15.11.2018 on which date only the exchange rate of the USD has been reduced to 72.95 from 74.70. Therefore, it is evident that as on date of the invoice namely 07.11.2018, the exchange rate of the USD was only 74.70. If that be the case, the CIF value as admitted by both sides is only Rs.511.70/- on the date of the invoice.

7. Needless to state that, for arriving at the CIF value, one has to go by the date of invoice not by going with the date of filing of the Bill of Entry. In other words, the value of the goods as reflected in the invoice alone will speak for considering as to whether the import is entitled to the benefit under notification no.53/2015-2020 dated 21.03.2018. Moreover, it is not made clear in the said notification itself that as to whether such value has to be arrived only on the date of filing the Bill of Entry. In the absence of any such clear indication, the normal course of arriving at the value is by taking into consideration of the date of invoice. Therefore, if the value of CIF is taken as Rs.511.70/- as on the date of invoice, certainly the petitioner is entitled to the

benefit under the notification no.53/2015-2020 dated 21.03.2018. Accordingly, the writ court has correctly considered the said aspect and allowed the writ petition with which, we find no reason to interfere. Thus, the Writ Appeal fails and the same is dismissed. No costs. Consequently, connected C.M.P.(MD) No.3998 of 2019 is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar(CS)

+1 CC to M/s.R.ARAVINDHAN, Advocate (SR-82648[F] dated 21/08/2019)

+1 CC to M/s.A.K.. JAYA RAJ, Advocate (SR-82943[F] dated 22/08/2019

Judgment made in
W.A.(MD)No.478 of 2019
20.08.2019

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