



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.11.2020

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THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P(MD).No.16756 of 2020
and W.M.P.(MD).No.13989 of 2020

Diamond Nuts,
Rep. by its Authorised Signatory, Dr.R.K.Bhoodes
No.21, Prashanthi Nagar,
Building No.5/653, Mangadu, Kollam, Kerala.

.. Petitioner

Vs.

1.The Joint Director (PP)
Directorate of Plant Protection, Quarantine & Storage,
Ministry of Agriculture & Farmer's Welfare,
Old CGO Complex, NH-4, Faridabad, Haryana 121 001,

2.The Plant Protection Officer (E)
Plant Quarantine Station,
Tuticorin.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India for issuance of Writ of Certiorarified Mandamus and call for the records relating to the impugned order dated 29.10.2020 issued in F.No.99-1/2020/PQD-172 passed by the 1st respondent and quash the same and further direct the 2nd respondent to permit clearance of the goods covered by bill of entry No.7899664 dated 13.06.2020.

For Petitioner : Mr.Hari Radhakrishnan

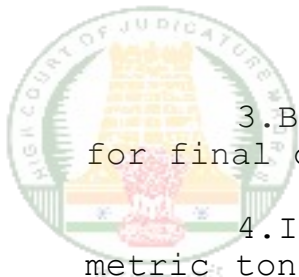
For Respondents : Mr.D.Saravanan
Central Government Standing counsel

ORDER

(This writ petition heard through video conference)

This writ petition has been filed challenging the order dated 29.10.2020, passed by the first respondent and for a consequential order to direct the second respondent to permit clearance of the goods covered by bill of entry No.7899664 dated 13.06.2020.

2.Heard Mr.Hari Radhakrishnan, learned counsel for the petitioner and Mr.D.Saravanan, learned Central Government Standing counsel appearing for the respondents.



3.By consent of both parties, this writ petition is taken up for final disposal at the admission stage itself.

4.It is the case of the petitioner that they imported 133.158 metric tons of raw cashew nuts vide bill of entry No.7899664 dated 13.06.2020, filed with Tuticorin Customs. It is their case that phytosanitary certificate submitted by them is in accordance with the Plant quarantine (Regulations of Import into India) Order, 2003, was rejected by the second respondent by his order dated 08.07.2020 and the second respondent directed the petitioner to deport the imported raw cashew nuts on the ground that phytosanitary certificate submitted by the petitioner was fake. Aggrieved by the order dated 08.07.2020, the petitioner preferred the statutory appeal on 13.07.2020 before the first respondent. By order dated 29.10.2020, the first respondent dismissed the appeal filed by the petitioner, confirming the findings of the second respondent. Aggrieved by the same, this writ petition has been filed.

5.The learned counsel for the petitioner drew the attention of this Court to the impugned order dated 29.10.2020, passed by the first respondent and in particular, he referred to the following paragraphs.

"In rejoinder the appellant submits that the PSC.No.IK2020/6112 dated 15.06.2020 and PSC No.IK2020/5396 dated 24.06.2020 issued from Nigeria and the fumigation certificate 0009370 dated 7th May 2020 produced by the exporter from Nigeria are genuine and since it has been provided by the exporter therefore, a presumption as to the genuineness of the same arises. They further submits that the consignment may be released either by re-inspection and / or one time relaxation as per PQ order.

On the query raised, the appellant/importer is not willing to verify again the said PSC from the place of origin i.e., Nigeria instead they are confined to their request to pay the one time relaxation fee and if needed they are ready to fumigate the consignment once again.

Now after going through the records and in view of the oral submissions made by the respective parties, I am of the view, even assuming that the fault cannot be attributed to the appellant regarding the fake PSC in question and further in view of the mandatory requirement regarding the submission of the genuine PSC issued by the country of origin the consignment in question cannot be allowed to remain in India as firstly, it would lay a wrong precedent and secondary the non-fulfillment of the mandatory requirements could have serious ramifications for our flora and fauna as well as environment in general."



6. After relying upon the aforementioned paragraphs of the impugned order, the learned counsel for the petitioner would submit that the fumigation certificate as well as the phytosanitary certificate submitted by the petitioner for importing the raw cashew nuts are genuine. He then submitted that the second respondent has got the power to relax the conditions of import permit and phytosanitary certificate in certain cases under Chapter 6 of the Plant quarantine (Regulations of Import into India) Order, 2003. Article 14 of the aforementioned Plant quarantine (Regulations of Import into India) Order, 2003, reads as follows:

"14. Relaxation conditions of Import Permit and Phytosanitary Certificate in certain cases

(1) The Central Government may, in public interest, relax any of the conditions of this Order relating to the import of any consignment. The Joint Secretary in-charge of Plant Protection in the Department of Agriculture & Cooperation shall be the competent authority for according the relaxation. Further the powers of relaxation has been delegated (vide DAC It.No.8-5/2004-PPI(pt) dated 2nd February 2005) to officers in charge of the Plant Quarantine Stations for relaxing the conditions of import permit and phytosanitary certificate required as per Plant Quarantine (Regulation of Import Into India) Order, 2003 as a one-time exception in favour of a single party and not for repeated violations by that party. All second or subsequent cases of violation of requirement of Import Permit and phytosanitary certificate by any party shall be forwarded to Joint Secretary (Plant Protection), Department of Agriculture & Cooperation.

(2) In the event of grant of relaxation by competent authority, the consignment shall be relaxed after charging the fee for import permit and fee for plant quarantine inspection at five times of normal rates."

7. After referring to the aforementioned Article, learned counsel for the petitioner would submit that in accordance with the said Article, the petitioner has applied for one time relaxation for the production of phytosanitary certificate before the second respondent on 08.09.2020. He would also submit that one time relaxation will have to be granted by the second respondent in accordance with Article 14(1) of the Plant quarantine (Regulations of Import into India) Order, 2003. The learned counsel for the petitioner on instructions would further submit that the petitioner is satisfied for the present, if the application of the petitioner dated 08.09.2020 seeking for one time relaxation under Article 14 of the Plant quarantine (Regulations of Import into India) Order, 2003, is considered by the second respondent, within a time frame to be



fixed by this Court. However, at the same time, he would submit that liberty may be granted to the petitioner, to challenge the impugned order dated 29.10.2020, passed by the first respondent, which is the subject matter of this writ petition, in case the application dated 08.09.2020, submitted by the petitioner, seeking for one time relaxation is rejected by the second respondent. This Court finds force in the submissions made by the learned counsel for the petitioner and neither the petitioner nor the respondents will be prejudiced if the request made by the learned counsel for the petitioner is granted by this Court.

8.For the foregoing reasons, this Court directs the second respondent to consider the petitioner's application dated 08.09.2020, filed under Article 14 of the Plant quarantine (Regulations of Import into India) Order, 2003, seeking for one time relaxation for the production of phytosanitary certificate in respect of the imported 133.158 MTs of raw cashew nuts, under bill of entry No.7899664 dated 13.06.2020, filed with Tuticorin Customs and pass final orders on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order. If the application dated 08.09.2020, submitted by the petitioner seeking for one time relaxation is rejected by the second respondent, the petitioner is granted liberty to challenge the very same impugned order, dated 29.10.2020, passed by the first respondent, before this Court under Article 226 of the Constitution of India.

9.With the aforesaid direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



TO:

1.The Joint Director (PP)
Directorate of Plant Protection, Quarantine & Storage,
Ministry of Agriculture & Farmer's Welfare,
Old CGO Complex, NH-4, Faridabad, Haryana 121 001,

2.The Plant Protection Officer (E)
Plant Quarantine Station,
Tuticorin.

+1 CC to M/s.D. SARAIVANAN, Advocate (SR-23079
[F] dated 27/11/2020)

W.P (MD) .No.16756 of 2020

26.11.2020

SR (CO)

NR (07/12/2020) 5P : 4C