IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.12454 of 2021
and WMP Nos.13234 to 13236 of 2021

1 M/s.Global Metro
No.395 11th Block Mogappair East
Kannadasan Street
Chennai-600 037 Rep. by
its Proprietor P.Gunasekaran … Petitioner

Vs

1 The Commissioner of Customs
Chennai-II Commissionerate Custom House No.
60 Rajaji Salai Chennai-600 001.

2 The Commissioner of Customs
Chennai-III Commissionerate Customs House
No.60 Rajaji Salai Chennai-600 001.

3 The Deputy Commissioner of Customs
Chennai-II Commissionerate
Customs House No.60 Rajaji Salai Chennai-
600 001.

4 The Deputy Commissioner of Customs
Group-1 Chennai-III
Commissionerate Customs House No.60 Rajaji
Salai Chennai-600 001.

5 The Additional Director General
Directorate of Revenue Intelligence
Bangalore Zonal Unit Opposite to BDA
Shopping Complex First Stage 3rd Block
HBR Layout Bangalore-560 043.

6 The Assistant / Deputy Director
Directorate of Revenue Intelligence
Bangalore Zonal Unit Opposite to BDA
Shopping Complex First Stage 3rd Block
HBR Layout Bangalore-56043. … Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to quash the communication dated 25.05.2021 issued from F.No.CUS/AG/MISC/341/ 2021- Gr.1

attributable to 4th respondent under the instructions of the 1st respondent rejecting the petitioner request for provisional release of consignments of Black Pepper seized vide Seizure Memo dated 03.04.2021 and direct the respondents more particularly the 1st respondent to release the goods provisionally in terms of Section 110A of the Customs Act 1962 imported vide Bill of Entry Nos. 3185706 dated 17.03.2021 3212240 dated 19.03.2021 3256382 dated 23.03.2021 3256389 dated 23.03.2021 and 3308760 dated 26.03.2021 and further direct the respondents to issue Demurrage cum Detention Waiver Certificate for waiver of Demurrage and Container Detention Charges, in respect of the said goods in terms of Section 6(1)(l) of Handling of Cargo in Customs Areas Regulations 2009 read with Regulation 10(1)(l) of Sea Cargo Manifest and Transhipment Regulations, 2018.

For Petitioner : Mr.Vijay Narayanan,
Senior Counsels
for Dr.S.Krishnandh

For Respondents : Mr.K.Mohanamurali
Senior Panel Counsel -R1 to R4
Mr.V.Sundareswaran
Senior Panel Counsel -R5 and R6

O R D E R

Heard Mr.Vijay Narayan, learned senior counsel appearing for Dr.S.Krishnandh, learned counsel for the petitioner and Mr.K.Mohanamurali, learned Senior Panel Counsel for Customs Department/R1 to R4 and Mr.V.Sundareswaran, learned Senior Panel Counsel for the Directorate of Revenue Intelligence (DRI)/R5 & R6.

2. This Writ Petition challenges, by way of certiorarified mandamus, communication dated 25.05.2021, which has been issued by R4/Deputy Commissioner of Customs conveying the decision of the Chief Commissioner of Customs rejecting the petitioner's request for provisional release of consignments of import of black pepper that have been seized vide seizure memo dated 03.04.2021. They also seek a direction to the respondents to release the goods provisionally in terms of Section 110A of the Customs Act 1962 (in short 'Act') and issue Demurrage-cum-Detention Waiver Certificate for waiver of Demurrage and Container Detention Charges, in respect of the said goods in terms of Section 6(1)(l) of Handling of Cargo in Customs Areas Regulations 2009 read with Regulation 10(1)(l) of Sea Cargo Manifest and Transhipment Regulations, 2018.

3. The petitioner has imported five consignments vide Bill of Entry Nos. 3185706 dated 17.03.2021, 3212240 dated 19.03.2021, 3256382 dated 23.03.2021, 3256389 dated

23.03.2021 and 3308760 dated 26.03.2021. The petitioner sought release of the consignments, both before the DRI as well as the authorities under the Customs Act, being the Commissioner of Customs as well as the Chief Commissioner of Customs. A detailed communication of the DRI dated 26.04.2021 indicates certain concerns that the DRI had entertained in regard to the consignments imported.

4. The crux of the litigation turns upon the valuation of the consignments in question, as Notification No.21/2015-20 dated 25.07.2018 (Notification in question) permits entry of black pepper falling under Entry No.0904 11 30 only if the CIF value of the import was Rs.500/- per kg or above. Imports of value less than Rs.500/- per kg is prohibited. It was the apprehension of the DRI that the goods have been over valued by the petitioner in order to render them freely importable, the word 'free' being used in the context of 'permitted to be imported', as the commodities are otherwise subject to duty at the rate of 8%.

5. Being of the view that the value of the consignments was in excess of what was the true value, investigation was undertaken by the DRI. The on-going investigation takes note of various documents that appear to indicate that the pricing of the commodity was less than that revealed by the petitioner and also that full consideration had not been remitted to the supplier overseas. Moreover, the DRI states that it is in possession of information to the effect that sales of the consignments importer earlier had been undertaken by the petitioner in the open market at a sum less than the import value.

6. On the basis of the aforesaid material stated to have been gathered by the DRI, the apprehension that arose was that the goods had been consciously inflated in value merely to enable their import in terms of the Notification in question. This narration is captured in the communication of DRI dated 26.04.2021 issued to the Deputy Commissioner of Customs, wherein, in conclusion they say that investigation was under progress and that the report would be forwarded to the Customs Department, post completion. As far as release is concerned, the ball is placed in the court of customs, the DRI leaving it to the customs authorities to consider the request for release in terms of Section 110 A of the Act.

7. The final stand of the DRI however, as conveyed vide communication dated 15.04.2021, paragraph 2 is categoric to the effect that 'this office does not have any objection for provisional release of the said goods'. They continue to state at paragraph 3 that 'It is herein requested that the said goods may be provisionally released as per the conditions stipulated under section 110 A of Customs Act, 1962.'. Thus the DRI before whom the investigation is stated to be on-going

in regard to the valuation of the goods has expressed no objection for the release of the same.

8. Based on the communication of the DRI dated 15.04.2021, the Deputy Commissioner/R2 on 05.05.2021 communicates to the petitioner that the request for provisional release was rejected by the adjudicating authority. There is some confusion as to who is the adjudicating authority in this case, as in the communications of the Deputy Commissioner of Customs, she merely refers to the rejection of request by the 'adjudicating authority' without specifying who that authority is. Petitioner before me is also unable to clarify this issue.

9. The request of the petitioner before the Chief Commissioner (who is not arrayed as a party before me) has been rejected and conveyed to the petitioner by the Deputy Commissioner under impugned order dated 25.05.2021. The order is cryptic and merely rejects the request stating that the import of the goods was prohibited as per the policy condition. It appears to me that the cart has been put before the horse, as admittedly investigation is presently on-going.

10. The crux of the apprehensions are as follows:

3. Investigation has revealed the following:

- The imports of Black Pepper from Sri Lanka by M/s Global Metro in controlled by Shri Arshad Shajahan.
- M/s Global Metro has imported black pepper by declaring the unit price in the range of Rs 501 to Rs. 512/kg. The terms of payment as per the Invoice in most cases is around 50% on DP/DAP terms i.e. Documents against Payment and balance on DA terms L.e. Documents against Acceptance. The time limit for making DA payment is 90 days to 120 days as per commercial Invoice.
- The said importer has made payments to the overseas muppliers only to an extent of payment against DP terms as per the Commercial Invoice. However, he has not paid the balance amount to the overseas supplier even after the expiry of time period of 90-120 days. He has accepted all the imported Black Pepper without raising any objection with the overseas suppliers on quality issues, in sum, there is no reason recorded by M/s Global Metro to make the lower payments.
- As per the documents recovered such as Sales Contract, email communication recovered during the search of the premises of M/s Global Metro it is found that the actual unit price of Black Pepper imported by M/s Global Metro from Sri Lanka is between USD 3- USD 4 per Kg L.e. much

below the declared unit price of Rs. 500 per Kg and less than the MIP specified in the FTP making the goods prohibited.

- On receipt of such imported black pepper from M/s Global Metro has sold them in the domestic market at a Unit price in the range of Rs. 300-Rs. 425/kg although the unit price of Rs. 502-Rs. 515/kg has been declared to the Customs authorities for the said imports.
- Further, the total value of import of Black Pepper by M/s Global Metro, as declared to Customs, for the period from May-2020 till date is around 31 Crores. However, it appears that M/s Global Metro has paid only around half of the said amount to their overseas suppliers of Black Pepper in Sri Lanka as per their Bank accounts Statements. Shri Arshad Shajahan of M/s Global Metro has confirmed in his statement that the balance amount to be paid to the Overseas Supplier would never be paid. The content of statement was corroborated by the documents found during investigation.
- The above facts have been evidenced by the analysis of bank statements, email communications, e-way bills and the informal accounts maintained by relevant entities.

11. No details of incriminating material have been furnished that would substantiate the conclusion that the goods have been inflated in value. As far as the balance of the consideration remaining to be paid to the overseas supplier, this is a matter of negotiation between the supplier and the importer and would not concern the statutory authorities in the matter of valuation of the goods. There are also certain statements that appear to have been recorded in the course of the on-going investigation. All in all, the apprehensions expressed are, as of now, just apprehensions, and would have to be supported by tangible material in order to establish a prima facie case against the petitioner.

12. I am given to understand by the learned Senior Standing Counsels for the Customs Department as well as for the DRI that the process of investigation would take some time and cannot be hurried.

13. The commodity in question is agricultural produce. The variety of black pepper imported is stated to be specific to the region of Srilanka, an important ingredient in the making of spices used in Indian cuisine, with a short shelf life. Assuming for the sake of argument that investigation is concluded in favour of the petitioner, if the provisional release is not granted, the entire consignments would have been compromised. The balance of convenience would thus require, in my considered view, that the consignments be

released, subject to the petitioner being put to terms. This would also ensure that the interests of the Department are securely protected. The petitioner will remit the entire duty and furnish bond to the satisfaction of the Assessing Authority in regard to interest payable, penalty or charges that may be deemed necessary.

14. The impugned order is set aside. It is made clear that nothing contained in this order will stand in the way of an independent enquiry by the authorities in the on-going investigation. The Deputy Commissioner of Customs/R3 is directed to quantify the duty and bond amounts and communicate the same to the petitioner forthwith and release the goods within a week of such remittance by the petitioner.

15. On the issue of waiver of demurrage charges, the issue is left open to be pursued before the authorities in the light of applicable Rules and Regulations.

16. This Writ Petition is disposed as above. No costs. Connected Miscellaneous Petitions are closed.

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-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

To

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Directorate of Revenue Intelligence
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Shopping Complex First Stage 3rd Block
HBR Layout Bangalore-56.

1 cc to Mr. K. Mohanamurali, Advocate Sr.33101

1 cc to MR. V. Sundareswaran, Advocate SR.33174

2 ccs to Mr.B. Sathishsundar, Advocate Sr.33061

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SMI(CO)
EU 20.7.2021