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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.03.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.4472, 5208, 19610 and 19778 of 2020
and
W.M.P.(MD)Nos.3795, 3796, 3798, 4555, 4556, 4557, 16329 and 16471 of 2020

W.P.(MD)No.4472 of 2020:-

M/s.Britto Timbers Private Limited,
No.1-30, Azhagiamandapam,
Mulagumoodu (PO)-620 167,
Kanyakumari District,
Represented by its Manager,
Agin Paul Joseph. ... Petitioner

Vs.

1.The Plant Protection Officer (E),
Ministry of Agriculture & Farmers Welfare,
Directorate of Plant Protection & Quarantine & Storage,
4/90, CGE Colony, 4th Street, Tuticorin – 3.

2.The Deputy Director (E),
Ministry of Agriculture & Farmers Welfare,
Directorate of Plant Protection & Quarantine & Storage,
4/90, CGE Colony, 4th Street, Tuticorin – 3.

3.The Superintendant of Customs (Disposal),
Office of the Commissioner of Customs,
Tuticorin Custom House,
Tuticorin.

4.The Manager, M/s.ALS CFS,
998, Behind Fisheries College,
Meelavittan Village,
Harbour Express Road,
Tuticorin – 628 008.

5.M/s.Vijayalakshmi Traders,
62, George Road,
Tuticorin – 628 001. ... Respondents

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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to letter Registration No.IR21Tut 2020000782 dated 25.02.2020 issued by the 1st respondent herein granting the plant Quartine clearance to the 5th respondent herein a third party purchaser of the goods on e-auction conduced by the 4th respondent on the grant of permission by the 3rd respondent customs authority for clearance of the same goods comprising of 31 numbers of talli wooden logs weighing 1,60,610 kgs which were actually imported and owned by the petitioner herein and covered by bill of Lading No. SAFM 711428206 dated 09.12.2018 and BE No. 9400085 dated 24.12.2018 for which the 2nd respondent had refused such permission to the petitioner herein earlier and ordered its deportation and quash the same as totally improper and illegal.

For Petitioner : Mr.N.Viswanathan

For Respondents : Mr.S.Jeyasingh,
Senior Central Govt.
Standing Counsel for R1 & R2

Mr.B.Vijay Karthikeyan,
Senior Central Govt.
Standing Counsel for R3

W.P.(MD)No.5208 of 2020:-

M/s.Britto Timbers Private Limited,
No.1-30, Azhagiamandapam,
Mulagumoodu (PO)-620 167,
Kanyakumari District,
Represented by its Manager,
Agin Paul Joseph. ... Petitioner

Vs.

1.The Superintendant of Customs (Disposal),
Office of the Commissioner of Customs,
Tuticorin Custom House,
Tuticorin.

2.The Deputy Director (E),
Ministry of Agriculture & Farmers Welfare,
Directorate of Plant Protection & Quarantine & Storage,
4/90, CGE Colony, 4th Street, Tuticorin - 3.

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3.The Joint Secretary (Plant Protection),
Ministry of Agriculture & Farmers Welfare,
Krishi Bhavan, New Delhi.

4.The Manager, M/s.ALS CFS,
998, Behind Fisheries College,
Meelavittan Village,
Harbour Express Road,
Tuticorin – 628 008. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records concerning letter C.No. VIII/25/76-77/2019-Disposal (UCC) dated 13.06.2019 issued by the 1st respondent herein granting permission to the 4th respondent to conduct E-Auction for disposal of the impugned goods viz., 35 pieces (68.205 CBM/85594 Kgs. of Paduk (Petrocarpus Soyaxil) logs which were actually imported and owned by the petitioner herein and covered by Bill of Lading BL No. 579495872 dated 09.12.2018 and Bill of Entry No. 9400063 dated 24.12.2018 lying at the CFS belonging to the 4th respondent and quash the same as totally improper and illegal.

For Petitioner : Mr.N.Viswanathan

For Respondents : Mr.B.Vijay Karthikeyan,
Senior Standing Counsel for R1.
Mr.P.Subbiah,
Central Govt. Standing Counsel for R2 & R3.
No appearance for R4.

W.P.(MD)No.19610 of 2020:-

M/s.Britto Timbers Private Limited,
No.1-30, Azhagiamandapam,
Mulagumoodu (PO)-629 167,
Kanyakumari District,
Represented by its Manager,
Agin Paul Joseph. ... Petitioner

Vs.

1.The Joint Secretary (Plant Protection),
Ministry of Agriculture & Farmers Welfare,
Krishi Bhavan, New Delhi.

2.The Deputy Director (E),
Ministry of Agriculture & Farmers Welfare,
Directorate of Plant Protection & Quarantine & Storage,
4/90, CGE Colony, 4th Street, Tuticorin – 3. ... Respondents

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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records connected with order dated 29.10.2020 passed by the 1st respondent herein, consequent to the directions issued by this Court in WP.(MD).No.12825 of 2020 dated 01.10.2020, rejecting the relaxation requested by the petitioner herein and to quash the same as having been passed contrary to law and fact.

For Petitioner : Mr.N.Viswanathan

For Respondents : Mrs.L.Victoria Gowri,
Assistant Solicitor General.

W.P.(MD)No.19778 of 2020:-

M/s.Britto Traders,
No.42/301/1, Azhagiamandapam,
Mulagumoodu (PO)-629 167,
Kanyakumari District,
Represented by its Manager,
Agin Paul Joseph. ... Petitioner

Vs.

1.The Joint Secretary (Plant Protection),
Ministry of Agriculture & Farmers Welfare,
Krishi Bhavan, New Delhi.

2.The Deputy Director (E),
Ministry of Agriculture & Farmers Welfare,
Directorate of Plant Protection & Quarantine & Storage,
4/90, CGE Colony, 4th Street, Tuticorin – 3. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records connected with order dated 29.10.2020 passed by the 1st respondent herein, consequent to the directions issued by this Court in WP.(MD).No.12762 of 2020 dated 01.10.2020, rejecting the relaxation requested by the petitioner herein and to quash the same as having been passed contrary to law and fact.

For Petitioner : Mr.N.Viswanathan

For Respondents : Mrs.L.Victoria Gowri,
Assistant Solicitor General.

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COMMON ORDER

M/s.Britto Timbers Private Limited and Britto Traders are sister concerns. They are trading in timber. They had imported four consignments of logs from Equatorial Guinea. All the consignments landed in Tuticorin Port in November-December 2018. As per the Plant Quarantine (Regulation of Import into India) Order, 2003, the consignments should have been fumigated prior to export with Methyl bromide at certain conditions and the treatment should have been endorsed on the Phytosanitary Certificate issued at the country of export.

2.In the case on hand, the petitioner had produced such Phytosanitary Certificates which turned out to be invalid. The stand of the petitioner is that the exporter has cheated him. The stand of the department is that the certificates are fake. It is true that this requirement could be relaxed. If the petitioner had committed violation for the first time, then, the plant protection officer himself can grant the relaxation. But for the second or subsequent cases of violation of requirements of import permit, the certificate should be forwarded to Joint Secretary (Plant Protection), Ministry of Agriculture & Farmers Welfare. There is no dispute that the petitioner had already obtained one such relaxation sometime in the year 2017 or 2018. Therefore, in the very nature of things, the file had to be dealt with only by the Joint Secretary (Plant Protection), Ministry of Agriculture & Farmers Welfare.

3.Even though the consignments had landed in November-December 2018, the importer could not obtain such a relaxation from the concerned authority.

4.As rightly pointed out by the learned standing counsel for the Customs Department, Section 48 of the Customs Act, mandates that goods brought from a place outside India should be cleared within thirty days and and if it is not done, the proper officer will have to issue notice to the importer. In the case on hand, such a notice was issued on 28.03.2019. On 05.04.2019, a second notice was also issued and it is styled as the final notice under Section 48 of the Act. The final paragraph reads that if no reply is received from the importer, it should be presumed that that they are not interested in the cargo and that it would be disposed of as per the provisions of the Act without any further reference or intimation. Unfortunately, the importer could not obtain any relaxation. Therefore, the customs authority was left with no other option but to auction the goods on 19.06.2019. Since there were no effective bidders, the auction was adjourned. Finally, it was held on 15.10.2019. On the said date, M/s.Vijayalakshmi Traders took part and turned out to be the successful bidder.

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Therefore, the goods that were the subject matter of Bill of Entry 9400085 dated 24.12.2018 were sold to the said M/s.Vijayalakshmi Traders for a sum of Rs.9,10,555/-. On remittance of the bid amount, the goods delivered on 27.02.2020. It is this auction proceedings that is challenged in WP(MD)No.4472 of 2020.

5.The learned counsel for the petitioner would submit that the petitioner had written to the custom authorities that they had taken up the matter with the concerned authorities and they are in the process of obtaining relaxation and that therefore, the cargo should not be auctioned off. He would fault the customs authorities for going ahead with the auction process.

6.The bidder/Vijayalakshmi Traders applied to the concerned authority and also obtained relaxation from the requirement to produce Phytosanitary Certificate. Thereafter, the goods were delivered by the customs authorities to M/s.Vijayalakshmi Traders. It is the grant of relaxation in favour of the bidder that is put to challenge in WP(MD) No.4472 of 2020. However, I can take it that the entire auction proceedings have been questioned by the importer.

7.I am not impressed with the contention of the learned counsel for the petitioner. As rightly pointed out by the learned standing counsel for the customs department, the customs authorities cannot be expected to wait indefinitely. They are under a statutory mandate cast on them under Section 48 of the Act. It is not as if, the cargo was disposed of behind the back of the importer. The importer was given notice on 28.03.2019 and again on 05.04.2019. Even the auction proceedings took place only in October 2019. As already pointed out, the goods had landed in India sometimes in November-December 2018. The goods were disposed of by the customs authorities only in October 2019. When the petitioner for full ten months could still not obtain relaxation in his favour, it would be unfair to expect the customs authorities to wait till the petitioner obtains an order in his favour. When the authorities had given reasonable time to the importer and within the reasonable time, the importer could not obtain relaxation, the authorities were left with no other option but to auction.

8.Therefore, I sustain the auction proceedings. Since the goods have been cleared, the challenge to the order dated 25.02.2020 which was passed by the Plant Protection Officer has become infructuous. However, the petitioner's counsel would state that after the taking applicable duties, the customs authorities are bound to pass on the balance amount to the owner of the goods, namely, the importer. He placed reliance on Section 152 of the Customs Act, 1962. It reads as under :

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> *"**152.Delegation of powers.**—The Central Government may, by notification in the Official Gazette, direct that subject to such conditions, if any, as may be specified in the notification—*
>
> *(a)any power exercisable by the Board under this Act shall be exercisable also by Principal Chief Commissioner of Customs or Chief Commissioner of Customs or a Principal Commissioner of Customs or Commissioner of Customs empowered in this behalf by the Central Government;*
>
> *(b)any power exercisable by a Principal Commissioner of Customs or Commissioner of Customs under this Act may be exercisable also by a Joint Commissioner of Customs or an Assistant Commissioner of Customs or Deputy Commissioner of Customs empowered in this behalf by the Central Government;*
>
> *(c)any power exercisable by a Joint Commissioner of Customs under this Act may be exercisable also by an Assistant Commissioner of Customs or Deputy Commissioner of Customs empowered in this behalf by the Central Government;*
>
> *(d)any power exercisable by an Assistant Commissioner of Customs or Deputy Commissioner of Customs under this Act may be exercisable also by a Gazetted Officer of Customs empowered in this behalf by the Board."*

9.But such a question has not been raised in the writ petition and it would not be appropriate on my part to go into the issue. W.P.(MD)No.4472 of 2020 is thus disposed by upholding the auction proceedings but by permitting the petitioner to submit a formal application under Section 152 of the Customs Act before the concerned authority for payment of the balance amount after deducting the applicable duties and statutory charges. The concerned authority after hearing the petitioner in person shall pass appropriate orders in accordance with law. The petitioner states that within a period of three weeks from the date of receipt of a copy of this order, they would make such an application and the concerned authority is directed to dispose of the same on merits and in accordance with law within a period of six weeks thereafter. I make it clear that all the contentions of the petitioner are left open.

10.The petitioner's second consignment that is the subject matter of Bill of Entry 9400063, dated 26.12.2018 also met the very same fate. The customs authority after issuing notice to the importer brought the goods for auction sale. The auction was held on 19.06.2019 and one Karithka Wood Industries had turned out to

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be a successful bidder. Their bid amount was Rs.10,50,000/-. But then, their request for relaxation of the production of Phytosanitary Certificate was rejected by the competent authority. Therefore, the goods could not be cleared and they are still lying in the customs station.

11.The sale permission granted by the customs authority in favour of the fourth respondent to conduct e-auction for disposal of the goods in question is under challenge in W.P.(MD)No.5208 of 2020. In view of the rejection of the request for relaxation, this issue no longer survives. However, learned counsel for the petitioner would request this Court to mould the relief and permit the petitioner to clear the goods.

12.In respect of the other two consignments that are subject matter of W.P.(MD)Nos.19610 and 19778 of 2020, no auction sale had taken place. On the other hand, Plant Quarantine Officer, Tuticorin, had passed orders for deportation. Likewise, the petitioner's request for relaxation was rejected by the competent authority/first respondent in W.P.(MD)Nos.19610 and 19778 of 2020.

13.The learned Assistant Solicitor General appearing for the respondents in the said two writ petitions would strongly contend that the orders passed by the competent authority do not warrant any interference. She took me through the provisions of Plant Quarantine Regulation of Import into India Order, 2003. She pointed out that the power of relaxation of any of the conditions of the order can be exercised only in public interest. She would point out that as a matter of practice, one time exception is usually accorded. If there is repeated violation, no indulgence can be shown. Of course, even second or subsequent case of violation of requirement of Phytosanitary Certificate by any party can be considered by the Joint Secretary (Plant Protection), Ministry of Agriculture & Farmers Welfare. However, no violator can, as a matter of right, insist that relaxation must be given. She would point out that in the case on hand, the petitioner was already found guilty of such a violation some two years ago and that therefore, the case on hand must be treated only as subsequent violation and therefore, the order passed by the authority ought not to be interfered with. She placed reliance on the decision of the Delhi High Court in India Timbers & Seasoning Plant (Prop Jaikashi Trading Company Pvt. Ltd.,) Vs. Union of India and Others in W.P.(C) No.1708 of 2016, dated 08.03.2016. The Hon'ble Judge in paragraphs 7 and 8 of the said order had observed as follows:-

> "7. *Having heard the learned counsel for the parties, this Court is of the view that in accordance with the Plant Quarantine Order, timber has to be*

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fumigated by the exporter. Rules 3 (20) and 9 (1) make it abundantly clear that fumigation prior to export is mandatory. No importer can state that because the timber has been fumigated in India, it should not be sent back to the country of origin.

8. Though, undoubtedly the power of relaxation is contained in the Quarantine Order, yet it has to be exercised for some cogent reasons and that too, in larger public interest. In fact, as pointed out by the Supreme Court in Union of India and Others Vs. Exim Rajathi India Private Limited, (2009) 16 SCC 263, import of food and trees can be dangerous both for humans as well as for agriculture. This Court is also of the view that even if the fault cannot be attributed to the petitioner for non-fumigation by the exporter, the consignment in question cannot be allowed to remain in India as firstly, it would lay down a wrong precedent and secondly, non-fulfillment of mandatory condition of fumigation at exporter's end could have serious ramification for our flora and fauna as well as environment in general."

14.According the learned Assistant Solicitor General, these observations would squarely apply to the case on hand also. She strongly pressed for dismissal of the writ petitions.

15.I carefully considered rival contentions and went through the materials on record. I must concur with two of the contentions raised by the learned Assistant Solicitor General. It is true that the importer cannot demand relaxation of the requirement of production Phytosanitary Certificate as a matter of right. It is equally true that in matters such as this, the Court should be extremely cautious as there are environmental and ecological implications. It is equally true that the petitioner was found to have committed violation of the requirements of Plant Quarantine Regulation of Import in India Order, 2003 on one occasion earlier. It is true that the goods is question have been imported to India without having been fumigated by Methyl bromide at the country of export. The petitioner had imported as many as four consignments at one go. If as claimed by the authority, the very import poses a serious threat to Indian ecology and environment, then no relaxation could have been granted in favour of Vijayalakshmi Traders in respect of the consignment that is subject matter of W.P.(MD)No.4472 of 2020.

16.The learned Assistant Solicitor General would contend that the consignment, which was purchased by Vijayalakshmi in the auction sale, was fumigated and the plant quarantine authorities

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conducted an inspection with regard to any presence of any pest or any other invasive substance and after being satisfied that their clearance will not have any adverse impact on Indian ecological and environment, the goods were allowed to be cleared.

17.I am of the view that the very same exercise can be undertaken in respect of the remaining consignments also. This Court can never mandate the authority to be unmindful of the consequences. On the other hand, this Court is only calling upon the authorities to do the very same exercise that was undertaken in respect of the consignment that is subject matter of W.P.(MD) No.4472 of 2020. The remaining three consignments can also be similarly fumigated and a similar inspection also undertaken. If thereafter, the authorities are satisfied that the clearance of the said consignments will not be of any threat to Indian ecology and environment, the importer can be allowed to take the goods after paying the applicable duties. Of course, relaxation can be given in favour of the importer only in public interest. In my view, by granting relaxation public interest would definitely be served, subject to the fulfillment of other conditions mentioned above. The petitioner's counsel would point out that the value of the consignment, that was the subject matter of W.P.(MD)No.4472 of 2020 was Rs.41,62,600/- but they were sold in favour of Vijayalakshmi Traders only for a sum of Rs.9,10,555/-. As a result of selling of the goods for ¼th of the actual value, the customs duties had also been lowered correspondingly.

18.We are struggling due to Covid-19 pandemic. Helping an individual importer to come out of the difficulties on certain terms and conditions, certainly advances public interest. The Father of Nation would say that one must have the small man in mind. Likewise, we must always keep the ordinary importer in mind. His interest is intrinsically linked to the nation's interest. It is like quantum entanglement. The petitioner had suffered a huge loss in respect of the first consignment. The petitioner through his counsel gives an undertaking before this Court that they would never ever again apply for relaxation. In other words, they would adhere to requirements of Plant Quarantine Regulation of Import in India Order, 2003 in letter and spirit. Obtaining such an undertaking takes care of the public interest. The petitioner knows that if tomorrow he imports another consignment without Phytosanitary Certificate, then his fate is doomed because such a consignment can never ever be cleared. That is all the more so, because of the order passed in these writ petitions.

19.That apart, as rightly pointed out by the learned counsel for the petitioner, it is not as if a second or third violation cannot be condoned at all. Subject to the precautionary measures

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to be adopted as already directed above, the relief sought for is moulded and the writ petitions are disposed of as mentioned above. The importer of course will have to bear the costs of fumigation and other precautionary measures to be taken by the plant quarantine authorities. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-)

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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 Plant Protection Officer (E),
Ministry of Agriculture & Farmers Welfare,
Directorate of Plant Protection & Quarantine & Storage,
4/90, CGE Colony, 4th Street, Tuticorin – 3.

2.The Deputy Director (E),
Ministry of Agriculture & Farmers Welfare,
Directorate of Plant Protection & Quarantine & Storage,
4/90, CGE Colony, 4th Street, Tuticorin – 3.

3.The Superintendant of Customs (Disposal),
Office of the Commissioner of Customs,
Tuticorin Custom House,
Tuticorin.

4.The Joint Secretary (Plant Protection),
Ministry of Agriculture & Farmers Welfare,
Krishi Bhavan, New Delhi.

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+1 CC to M/s.S.JEYASINGH, Advocate (SR-14351[F] dated 30/03/2021)

+1 CC to M/s.B.VIJAY KARTHIKEYAN, Advocate (SR-14462[F] dated 30/03/2021)

+4 CC to M/s.N.VISWANATHAN, Advocate (SR-14525 to 14528[F] dated 30/03/2021)

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